



# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, November 15, 2018.

## MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on December 11, 2018, at 1:00 p.m. in room 149 Capitol Annex. **ARRS Tentative Agenda - 1489**

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Title		Chapter	Regulation
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The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.



**Administrative Regulation Review Subcommittee  
Tentative Meeting Agenda  
Tuesday, December 11 2018 1:00 PM  
Annex Room 149**



1. CALL TO ORDER AND ROLL CALL
2. REGULATIONS FOR COMMITTEE REVIEW

**DEPARTMENT OF STATE**

**Kentucky Registry of Election Finance**

[032 KAR 001:030 & E](#). Election finance statement forms; campaign contributions or expenditures in excess of \$3,000. ("E" expires 02-27-2019) (Deferred from November)

**FINANCE AND ADMINISTRATION**

**Department of Revenue**

**General Administration**

[103 KAR 001:040](#). Waiver of penalties.

[103 KAR 001:130](#). Taxation of federal and certain nonfederal obligations.

**Income Tax; Corporations**

[103 KAR 016:060](#). Income classification; apportionable and nonapportionable.

[103 KAR 016:090](#). Appointment; payroll factor.

[103 KAR 016:230](#). Intangible expenses, intangible interest expense, and management fees.

[103 KAR 016:240](#). Nexus standard for corporations and pass-through entities.

[103 KAR 016:290](#). Appointment; property factor.

[103 KAR 016:330](#). Appointment and allocation; alternative apportionment; separate accounting.

[103 KAR 016:340](#). Completed contract method.

**Income Tax; Miscellaneous**

[103 KAR 019:010](#). Computation of income; estates and trusts. (Not Amended After Comments)

**Kentucky Retirement Systems**

**General Rules**

[105 KAR 001:145](#). Voluntary cessation of participation by employers.

[105 KAR 001:147 & E](#). Involuntary cessation of participating employers. ("E" expires 4-3-2019)

**BOARDS AND COMMISSIONS**

**Board of Pharmacy**

[201 KAR 002:370](#). Pharmacy services in long-term care facility (LTCF). (Amended After Comments)

**Board of Chiropractic Examiners**

[201 KAR 021:015](#). Code of ethical conduct and standards of practice. (Deferred from November)

[201 KAR 021:045](#). Specialties. (Deferred from November)

**Board of Social Work**

[201 KAR 023:150](#). Complaint procedure, disciplinary action, and reconsideration.

**Board of Examiners of Psychology**

[201 KAR 026:130](#). Grievances and administrative complaints.

[201 KAR 026:140](#). Procedures for disciplinary hearings.

[201 KAR 026:171](#). Requirements for supervision.

[201 KAR 026:175](#). Continuing education.

[201 KAR 026:200](#). Education requirements.

[201 KAR 026:211](#). Repeal of 201 KAR 026:210.

[201 KAR 026:280](#). Licensed psychological associate: application procedures and temporary license.

**Board of Licensure of Occupational Therapy**

[201 KAR 028:021](#). Repeal of 201 KAR 028:020, 201 KAR 028:090, 201 KAR 028:110, 201 KAR 028:180, and 201 KAR 028:210.

[201 KAR 028:060](#). Licensure, renewals and requirements.

[201 KAR 028:170](#). Deep physical agent modalities.

**TOURISM, ARTS AND HERITAGE**

**Department of Fish and Wildlife Resources**

**Game**

[301 KAR 002:095](#). Importation of cervid carcasses and parts. (Not Amended After Comments)

[301 KAR 002:132](#). Elk hunting seasons, permits, zones, and requirements.

**ENERGY AND ENVIRONMENT**

**Department for Environmental Protection: Division of Waste Management**

**Hazardous Waste**

[401 KAR 039:060](#). General requirements.

[401 KAR 039:080](#). Hazardous waste handlers.

[401 KAR 039:090](#). Hazardous waste permit program.

**Enforcement and Compliance Monitoring**

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[401 KAR 040:051](#). Repeal of 401 KAR 040:050.

### **Division for Air Quality**

#### **Permits, Registrations, and Prohibitory Rules**

[401 KAR 052:050](#). Permit application forms. (Amended After Comments)

[401 KAR 052:070](#). Registration of air contaminant sources. (Amended After Comments)

## **JUSTICE AND PUBLIC SAFETY**

### **Special Law Enforcement Officers**

[500 KAR 002:030](#). Special law enforcement officers: evaluation examination.

### **Special Local Peace Officers**

[500 KAR 003:020](#). Filing and processing SLPO commissions.

## **TRANSPORTATION**

### **Department of Vehicle Regulation**

#### **Administration**

[601 KAR 002:030 & E](#). Ignition interlock. ("E" Expires 1-9-2019) (Not Amended After Comments) (Deferred from October)

### **Department of Highways: Division of Planning**

#### **Traffic**

[603 KAR 005:070](#). Motor vehicle dimension limits.

## **EDUCATION AND WORKFORCE DEVELOPMENT**

### **Board of Education: Department of Education**

#### **Office of Chief State School Officer**

[701 KAR 005:150](#). Nontraditional Instruction Program.

#### **Office of Learning Programs Development**

##### **Office of Instruction**

[704 KAR 003:292](#). Education of migratory children.

[704 KAR 003:303](#). Required academic standards.

[704 KAR 003:305](#). Minimum requirements for high school graduation.

[704 KAR 003:365](#). Complaint procedures for programs under the Elementary and Secondary Education act of 1965.

##### **Academic Standards**

[704 KAR 008:010](#). Kentucky Academic Standards for Computer Science Elective.

[704 KAR 008:020](#). Kentucky Academic Standards for Reading and Writing.

[704 KAR 008:030](#). Kentucky Academic Standards for Health.

[704 KAR 008:040](#). Kentucky Academic Standards for Mathematics.

[704 KAR 008:050](#). Kentucky Academic Standards for Physical Education.

## **LABOR**

### **Workers' Compensation Funding Commission**

[803 KAR 030:010](#). Special fund assessments. (Amended After Comments)

[803 KAR 030:021](#). Repeal of 803 KAR 030:020. (Deferred from October)

## **PUBLIC PROTECTION**

### **Department of Alcoholic Beverage Control**

#### **Licensing**

[804 KAR 004:011](#). Repeal of 804 KAR 004:010.

## **ENERGY AND ENVIRONMENT**

### **Department of Natural Resources: Division of Mine Safety**

#### **Mining Safety Standards**

[805 KAR 003:100](#). Equipment use and operation.

## **PUBLIC PROTECTION**

### **Department of Insurance**

#### **Administration**

[806 KAR 002:092](#). Disclosure of local government taxes and collection fee.

[806 KAR 002:100](#). Disclosure of insurance premium surcharge.

[806 KAR 002:121](#). Repeal of 806 KAR 002:120 and 806 KAR 002:150.

#### **Kinds of Insurance; Limits of Risk; Reinsurance**

[806 KAR 005:011](#). Repeal of 806 KAR 005:010 and 806 KAR 005:020.

## **HEALTH AND FAMILY SERVICES**

### **Office of Inspector General: Division of Health Care**

#### **Long-term Care**

[900 KAR 002:021](#). Repeal of 900 KAR 002:020. (Deferred from November)

### **Office of Inspector General**

#### **Division of Certificate of Need**

##### **Certificate of Need**

[900 KAR 006:075 & E](#). Certificate of need nonsubstantive review. ("E" expires 3-24-2019)

### **Department of Public Health**

#### **Division of Administration and Financial Management**

##### **Local Health Departments**

[902 KAR 008:165](#). Local health department accounting and auditing requirements.



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[902 KAR 008:170](#). Local health department financial management requirements.

### **Department for Medicaid Services**

#### **Division of Program Integrity**

##### **Medicaid Services**

[907 KAR 001:005](#). Nonduplication of payments.

[907 KAR 001:075](#). Hearings and appeals for individuals with intellectual disability.

##### **Occupational, Physical, and Speech Therapy**

[907 KAR 008:040](#). Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities.

### **Department for Community Based Services**

#### **Division of Protection and Permanency**

##### **Child Welfare**

[922 KAR 001:050](#). State funded adoption assistance.

[922 KAR 001:060](#). Federal Title IV-E adoption assistance.

[922 KAR 001:360 & E](#). Private child care placement, levels of care, and payment. ("E" expires 2-28-2019) (Amended After Comments)

[922 KAR 001:530](#). Post-adoption placement stabilization services.

### **3. REGULATIONS REMOVED FROM DECEMBER'S AGENDA**

#### **ENERGY AND ENVIRONMENT: Underground Storage Tanks**

[401 KAR 042:005](#). Definitions for 401 KAR Chapter 042. (Comments Received; SOC due 12-14-2018)

[401 KAR 042:020](#). UST system requirements, notification, registration, and annual fees. (Comments Received; SOC due 12-14-2018)

[401 KAR 042:060](#). UST system release and corrective action requirements. (Comments Received; SOC due 12-14-2018)

[401 KAR 042:250](#). Petroleum Storage Tank Environmental Assurance Fund reimbursement. (Comments Received; SOC due 12-14-2018)

[401 KAR 042:330](#). Small Owners Tank Removal Account. (Comments Received; SOC due 12-14-2018)

[401 KAR 042:341](#). Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340. (Comments Received; SOC due 12-14-2018)

#### **PUBLIC PROTECTION: Real Estate Authority: Board of Home Inspectors**

[815 KAR 006:001](#). Definitions for 815 KAR Chapter 6. (Comments Received, SOC ext. due 12-14-2018)

[815 KAR 006:010](#). Licensing requirements. (Comments Received, SOC ext. due 12-14-2018)

[815 KAR 006:030](#). Standards of conduct, complaints, and discipline. (Comments Received, SOC ext. due 12-14-2018)

[815 KAR 006:040](#). Education requirements and providers. (Comments Received, SOC ext. due 12-14-2018)

[815 KAR 006:101](#). Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100. (Comments Received, SOC ext. due 12-14-2018)

#### **HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Long-term Care**

[900 KAR 002:040](#). Citations and violations; criteria and specific acts. (Comments Received, SOC ext.; due 12-14-2018)

##### **Department of Public Health: Food and Cosmetics**

[902 KAR 045:005](#). Kentucky food code. (Comments Received, SOC ext.; due 12-14-2018)

[902 KAR 045:007](#). Repeal of 902 KAR 045:006 and 902 KAR 045:140. (Comments Received, SOC ext.; due 12-14-2018)

[902 KAR 045:090](#). Home-based processors and farmers market home-based microprocessors. (Comments Received, SOC ext.; due 12-14-2018)

##### **Department for Community Based Services: Division of Protection and Permanency: Child Welfare**

[922 KAR 001:010](#). Independent non-relative adoptions. (Comments Received; SOC ext.; due 12-14-2018)

[922 KAR 001:100 & E](#). Public agency adoptions. ("E" expires 04-14-2019) (Comments Received; SOC ext.; due 12-14-2018)

**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, mailing address, e-mail 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 letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

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

**Review Procedure**

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY  
907 KAR 1:560E

This emergency administrative regulation is being promulgated to update the hearing and appeals process to comply with federal timeline requirements, allow for the cabinet secretary or designee to sign final or recommended orders, update obsolete language, and to make the regulatory language consistent with the terminology of KRS Chapter 13B. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal and state funds and pursuant to KRS 13A.190(1)(a)4. to protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor  
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Emergency Amendment)

907 KAR 1:560E. Medicaid hearings and appeals regarding eligibility.

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 205.531, 211.461, 211.466, 42 C.F.R. 431 subpart E, 42 C.F.R. 431.233, 42 C.F.R. Part 456, 42 U.S.C. 1396

STATUTORY AUTHORITY: KRS 194A.025(1), 194A.030(2), 194A.050(1), 205.531, EO 2004-726]

EFFECTIVE: November 1, 2018

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to the Medicaid grievance, hearing and appeal process regarding Medicaid eligibility issues.

Section 1. Definitions. (1) "Appeal board" means the secretary, or entity or individual designated by the secretary of the Cabinet for Health and Family Services to hear appeals following a decision by a designated hearing agency.

(2) "Applicant" means an individual applying for Medicaid. (3)[(2)] "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(4)[(3)] "Department" means the Department for Medicaid Services or its designee.

(5)[(4)] "Designated hearing agency" means the entity designated by the secretary of the Cabinet for Health and Family Services to adjudicate administrative hearings[Department for Social Insurance].

(6)[(5)] "Recipient" means an individual who receives Medicaid.

(7) "Secretary" means the secretary of the Cabinet for Health and Family Services.

Section 2. Informing the Applicant or Recipient of His Rights. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456[906 KAR 4:080], the following provisions shall apply:

(1) Each[An] applicant or recipient shall be informed of his or her right to a hearing:

- (a) Verbally and in writing when application is made; and
- (b) In writing if an action is taken affecting the applicant's or

recipient's[his] eligibility in accordance with KRS 13B.050.

(2) Each[An] applicant or recipient shall be informed of the method by which the applicant or recipient[he] may obtain a hearing and that the applicant or recipient[he] may be represented by:

- (a) Legal counsel;
- (b) A relative;
- (c) A friend;
- (d) Other spokesperson; or
- (e) The applicant or recipient may elect to self-represent[Himself].

Section 3. Request for a Hearing. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456[906 KAR 4:080], the following provisions shall apply:

(1) An applicant, recipient, or an authorized representative may request a hearing by filing a request with the designated hearing agency at the local office or central office of the Department for Community Based Services.

(2) The applicant, recipient, or authorized representative shall clearly indicate a desire for a hearing by submitting a statement:

- (a) In written form; or
- (b) Verbally and followed up in writing. ~~[(3) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to submit the written request.]~~

Section 4. Time Limitation for Request. (1) To be considered timely, a hearing request relating to a Medicaid eligibility action or delay in taking a timely action[written or verbal (with appropriate follow-up in writing) request] from an applicant, recipient, or authorized representative [with regard to an action or a delay in taking a timely action by the Department for Medicaid Services or its designee regarding Medicaid eligibility] shall be received by the designated hearing agency within:

- (a) Thirty (30) days of the notice of:
  1. Denial of an application;
  2. Discontinuance of an active case; or
  3. Increase in patient liability; or
- (b) A time period equal to the delay in action by the agency.

(2) An additional thirty (30) days for requesting a hearing shall be granted if it is determined by the representative of the designated hearing agency[hearing officer] that the delay was for good cause in accordance with the following criteria:

- (a) The applicant or recipient was away from home during the entire filing period;
- (b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of:
  1. Adverse action;
  2. Discontinuance of Medicaid eligibility; or
  3. Increase in patient liability;
- (c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of:
  1. Adverse action;
  2. Discontinuance of the Medicaid eligibility; or
  3. Increase in patient liability;
- (d) Serious illness of the applicant or recipient; or
- (e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Except as provided in subsection (3) or (4) of this section, Medicaid eligibility shall be continued at the level prior to the adverse action through the month in which the representative of the designated hearing agency's[hearing officer's] decision is:

(a) Rendered if the request results from dissatisfaction regarding a:

1. Proposed discontinuance; or
2. Proposed increase in patient liability; and
- (b) Received within ten (10) days of the date of the:
  1. Advance notice of adverse action; or
  2. Notice of discontinuance from the Department for Medicaid

Services or its designee.

(2) Except as provided in subsection (4) of this section, Medicaid shall be reinstated and continued through the month in which the representative of the designated hearing agency's~~hearing officer's~~ decision is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of:

1. Adverse action;
2. Discontinuance of Medicaid eligibility; or
3. Increase in patient liability; and

(b) The reason for delay meets the good cause criteria established in Section 4(2) of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant, recipient or authorized representative requests the discontinuance or increase in patient liability to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation.

(5) A continued or reinstated benefit shall be considered an overpayment if the agency decision is upheld.

(6) A time limited benefit shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information regarding:

1. The hearing process;
2. The right to case record review prior to the hearing;
3. The right to representation; and
4. A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2)(a) A party to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case.

(b) Less timely notice may be requested by the applicant, recipient or authorized representative to expedite the scheduling of the hearing.

(3)(a) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision.~~[.]~~

~~(b) A[with the exception that a] hearing determination shall be held within thirty (30) days of the hearing request date if it is regarding a:~~

1. Community~~[community]~~ spouse income; or
2. Resource~~[resource]~~ allowance~~[shall be held within thirty (30) days of the hearing request date]~~.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant, recipient, or authorized representative:

(a) May withdraw a~~his~~ request for a hearing prior to release of the representative of the designated hearing agency's~~hearing officer's~~ decision; and

(b) Shall be granted the opportunity to discuss withdrawal with the applicant's, recipient's, or authorized representative's~~his~~ legal counsel or representative prior to finalizing the action.

(2)~~[Abandonment of request]~~

(a) A hearing request shall be considered abandoned if the applicant, recipient, or authorized representative fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing.

(1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
- (b) Review the case record relating to the issue; and
- (c) Submit additional information in support of the applicant's or recipient's~~his~~ claim.

(2) If the hearing involves medical issues:

(a) A medical assessment by an individual other than a person involved in the original decision shall be obtained, at the department's expense, if the representative of the designated hearing agency~~hearing officer~~ considers it necessary; and

(b) If a medical assessment, at the department's expense, is requested by the applicant, recipient, or authorized representative and is denied by the representative of the designated hearing agency~~hearing officer~~, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant, recipient or authorized representative may request and shall be entitled to a postponement of a hearing if the request is made:

- (a) Before the hearing; and
- (b) In accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

(2) The decision to grant the postponement shall be made by the representative of the designated hearing agency~~hearing officer~~.

(a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

(b) The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. (1) The department may determine that corrective action to provide or restore eligibility is appropriate if:

- (a) A hearing has been requested;
- (b) A hearing decision has not been rendered; and
- (c) The department's action or proposed action made the applicant or recipient ineligible for benefits to which the applicant or recipient~~he~~ was entitled.

(2) After corrective action has been taken:

- (a) The applicant, recipient, or authorized representative shall be given the opportunity to withdraw the hearing request; and
- (b) The hearing process shall continue if the applicant, recipient or authorized representative wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The representative of the designated hearing agency~~hearing officer~~ shall be impartial and if necessary, the representative shall disqualify himself or herself as required by KRS 13B.040.

(3) The hearing shall be conducted in-state and at a location where the applicant, recipient, or authorized representative may attend without undue inconvenience.

(4) If necessary to receive full information on the issue, the representative of the designated hearing agency~~hearing officer~~ may examine each party who appears and the party's~~his~~ witnesses.

(5) The representative of the designated hearing agency~~hearing officer~~ may schedule a hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 12. Exceptions to a Recommended Order. (1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and

Family Services, Division of Administrative Hearings, within fifteen (15) days from the date that the recommended order is mailed.

Section 13. The Decision. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456[906-KAR-1:080], the following provisions shall apply:

(1) After the hearing is concluded, the representative of the designated hearing agency[hearing-officer] shall issue a decision in accordance with the requirements of KRS 13B.110.

(2) A decision with regard to a community spouse's income allowance shall be subject to a downward adjustment as deemed necessary by the agency as circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment with regard to a resource that is:

1. Attributed to the community spouse; and

2. Not transferred within six (6) months of the Medicaid approval date.

(b) This adjustment shall be appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issue considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 14[13]. Appeal from Decision of Representative of the Designated Hearing Agency [hearing-officer] for an Applicant and Recipient. (1) An applicant, recipient, or his authorized representative wishing to appeal the decision of a representative of the designated hearing agency[hearing-officer] shall file an appeal to the designated[an-appointed] appeal board.

(2) The appeal request shall be considered timely if it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the representative of the designated hearing agency's[hearing-officer's] decision was mailed.

(3) If the good cause criteria established in Section 4(2) of this administrative regulation is met, an appeal request received within thirty (30) days of the representative of the designated hearing agency's[hearing-officer's] decision shall be considered timely.

(4) The request shall be:

(a) Filed:

1. In writing; or

2. Verbally, if a written request is subsequently sent; and

(b) Considered filed on the day the request is received.

~~(5)[An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal or Withdrawal, to submit the written request.~~

~~(6)[Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the representative of the designated hearing agency[hearing-officer].~~

Section 15[14]. Applicant's or Recipient's Rights Prior to an Appeal Board Consideration. (1) An appeal shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 16[15]. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the representative of the designated hearing agency[hearing-officer] unless the applicant, recipient, or authorized representative specifically requests permission to file additional proof or an exception to the recommended order was filed.

(2) If an appeal is being considered on the record, a party may present a written argument and at the appeal board's discretion, be allowed to present an oral argument.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to the introduction of additional evidence or to rebut or refute the additional evidence.

Section 17[16]. The Appeal Board Decision. The decision of the appeal board shall:

(1) Be duly signed by the secretary or members of the appeal board;

(2) Set forth in writing the facts on which the decision is based; and

(3) Be irrevocable in respect to the issue in the individual case unless the decision is set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150.

Section 18[17]. Medicaid Case Actions Following a Decision. (1) A Medicaid case action following a decision of a representative of the designated hearing agency's[hearing-officer] or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) If it is established that the applicant or recipient was eligible during an entire period, the month in which the incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal involving an increase in patient liability, action shall be taken to reduce the patient liability within ten (10) days of the receipt of the hearing or appeal board decision.

Section 19[18]. Medicaid Managed Care Provision of Services. (1) A dispute resolution between a recipient and a partnership or managed behavioral health care organization shall be in accordance with KRS 211.461 through 211.466 and 42 C.F.R. Part 456[906-KAR-1:080].

(2) All other hearings or appeals relating to the Medicaid managed care provision of services shall be processed in accordance with 907 KAR 1:563.

Section 20[19]. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (brief included) of an appeal to the appeal board;

(c) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

Section 21[20]. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7). ~~[Section 21. Incorporation by Reference. (1) Form PAFS-78, May 1996 edition, Department of Medicaid Services, is incorporated by reference.~~

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

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091; [CHFSRegs@ky.gov](mailto:CHFSRegs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(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 change this administrative regulation by updating the hearing and appeals process to comply with federal timeline requirements, allow for the cabinet secretary to sign final or recommended orders, allow for exceptions to a recommended order, delete a form that is no longer used, update obsolete language, and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the appeals process to comply with federal timeline requirements, update obsolete language and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating the appeals process to comply with federal timeline requirements, updating obsolete language and making the regulatory language consistent with the terminology of KRS Chapter 13B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by updating the appeals process to comply with federal timeline requirements, updating obsolete language and making the regulatory language consistent with the terminology of KRS Chapter 13B.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects all current Medicaid recipients. Currently 1.2 million people within the Commonwealth are Medicaid recipients.

(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 will be necessary to comply.

(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 impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A more timely appeals process will be implemented.

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

(a) Initially: The Department for Medicaid Services (DMS) does not anticipate any additional costs to implement this amendment.

(b) On a continuing basis: DMS does not anticipate any additional costs to implement this 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 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: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

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

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 will affect each Medicaid recipient who requests appeal of an action affecting their eligibility for medical assistance.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 13B, KRS 205.231, 205.237, and 42 C.F.R. 431.200 - 250.

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? This amendment will not generate revenue for state or local government during the first year of program administration.

(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 revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431 Subpart E.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. subpart E governs fair hearings for applicants and beneficiaries.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or



requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

**STATEMENT OF EMERGENCY**  
**907 KAR 1:563E**

This emergency administrative regulation is being promulgated to update the hearing and appeals process to comply with federal timeline requirements, by allowing the cabinet secretary to sign final or recommended orders, update obsolete language, and to make the regulatory language consistent with the terminology of KRS Chapter 13B. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal and state funds and pursuant to KRS 13A.190(1)(a)4. to protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor  
ADAM M. MEIER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(Emergency Amendment)**

**907 KAR 1:563E. Medicaid covered services appeals and hearings unrelated to managed care.**

RELATES TO: KRS Chapter 13B, 194A.025, 205.231, 205.237, 205.520, 205.8451, 210.270, 42 C.F.R. 431.233, 431.244, Part 475, 475.101, 483.2, 483.12, 431 Subpart E, 483 Subpart E, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2) and (3), 205.6315, 42 U.S.C. 1396

EFFECTIVE: November 1, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes policies and requirements relating to an adverse action, an appeal, or a hearing regarding Medicaid covered services that are not the responsibility of a managed care organization.

Section 1. Definitions. (1) "1915(c) home and community based waiver service" means a service available or provided via a 1915(c) home and community based waiver services program.

(2) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(3) "Administrative hearing" is defined by KRS 13B.010(2).

(4) "Appeal board" means the entity or individual designated by the secretary of the Cabinet for Health and Family Services to hear appeals of recommended orders or final orders following a decision by a designated hearing agency or hearing officer.

(5) "Applicant" means an individual who has applied for Medicaid covered services.

(6)[(5)] "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the recipient or the applicant; or

(b) A legal guardian.

(7)[(6)] "Cabinet" means the Cabinet for Health and Family Services.

(8)[(7)] "Department" means the Department for Medicaid

Services or its designee.

(9) "Designated hearing agency" means the entity designated by the secretary of the Cabinet for Health and Family Services to adjudicate administrative hearings.

(10)[(8)] "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program covered services.

(11)[(9)] "Final order" is defined by KRS 13B.010(6).

(12)[(10)] "Hearing officer" is defined by KRS 13B.010(7), and includes a representative from a designated hearing agency.

(13)[(11)] "ICF IID" means intermediate care facility for an individual with an intellectual disability.

(14)[(12)] "Managed care organization" or "MCO" 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.

(15)[(13)] "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(16)[(14)] "Party" is defined by KRS 13B.010(3).

(17)[(15)] "PASRR" means preadmission screening and resident review.

(18)[(16)] "Patient liability" means the financial obligation of a recipient towards the cost of the recipient's nursing facility services or services provided pursuant to a 1915(c) waiver.

(19)[(17)] "Provider" is defined by KRS 205.8451(7).

(20)[(18)] "QIO" or "quality improvement organization" means an entity that meets the requirements established in 42 C.F.R. 475.101.

(21)[(19)] "Recipient" is defined by KRS 205.8451(9).

(22)[(20)] "Recommended order" is defined by KRS 13B.010(5).

(23)[(21)] "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Administrative Hearing Rights. (1) An applicant, recipient, or authorized representative shall be informed, in writing, of the applicant's or recipient's right to an administrative hearing if an adverse action is taken affecting covered services.

(2) An applicant, recipient, or authorized representative shall be informed of the method by which the applicant or recipient may obtain an administrative hearing and that the applicant or recipient may be represented by:

- (a) Legal counsel;
- (b) A relative;
- (c) A friend;
- (d) A spokesperson not listed in paragraph (a), (b), (c), (e), or (f) of this subsection;
- (e) An authorized representative; or
- (f) Himself or herself.

(3) An adverse action notice shall contain a statement of:

- (a) The Medicaid adverse action;
- (b) The reason for the action;
- (c) The specific federal or state law or administrative regulation that supports the action; and

(d) An explanation of the circumstances under which payment for services shall be continued if an administrative hearing is requested in a timely manner pursuant to Section 5 of this administrative regulation.

Section 3. Notification Process. (1) An adverse action notice regarding an applicant or a recipient shall be mailed to the applicant, recipient, or authorized representative of the applicant or recipient using:

- (a) The United States Postal Service; and
- (b) A return receipt requested format.

(2) Refusal by an applicant, a recipient, or an authorized representative to confirm receipt of an adverse action notice shall be considered receipt of the adverse action notice.

Section 4. Request for an Administrative Hearing. (1) An applicant, recipient, or an authorized representative may request

an administrative hearing by filing a written request with the department.

(2) If an applicant, recipient, or authorized representative requests an administrative hearing, the request shall:

- (a) Be in writing and clearly specify the reason for the request;
- (b) Indicate the date of service or type of service for which payments may be denied; and
- (c) Be postmarked within thirty (30) calendar days from the date of the department's written notice of adverse action of:
  1. Discontinuance of services;
  2. Adverse determination made with regard to the PASRR requirements of 42 U.S.C. 1396r(e); or
  3. Patient liability.

Section 5. Continuation of Medicaid Covered Services. (1)(a) Except as established in paragraphs (b) or (c) of this subsection or subsections (2), (3), or (4) of this section, if a request for an administrative hearing is postmarked or received within ten (10) days of the advance notice date of denial, the individual shall remain eligible for the care, program participation, or service denied until the date that the final order is rendered in accordance with Section 12[14] of this administrative regulation.

(b) The individual shall not remain eligible for the care, program participation, or service denied if:

- 1.a. It is determined at the administrative hearing that the sole issue is one of federal or state law or policy; and
- b. The department promptly informs the individual in writing that the services shall be terminated or reduced pending the administrative hearing decision;
2. The individual's eligibility for time-limited benefits has expired; or

3. The individual receives in full the specified amount of care or number of services that were authorized by the department.

(c) Except as established in paragraph (d) of this subsection, a request for an amount of care or number of services subsequent to receiving a previously authorized amount of care or number of services in full shall not be considered a continuation of the previously authorized amount of care or number of services.

(d) The following shall qualify for continuation of services in accordance with paragraph (a) of this subsection if the care, program participation, or service was previously received by the individual within thirty (30) days of the request for continuation:

1. Denial that an individual meets patient status criteria to qualify for nursing facility services pursuant to 907 KAR 1:022;
2. Denial that an individual meets patient status criteria to qualify for ICF IID services pursuant to 907 KAR 1:022;
3. Denial that an individual meets nursing facility level of care criteria, nursing facility patient status criteria, or ICF IID patient status criteria pursuant to 907 KAR 1:022 to qualify for 1915(c) home and community based waiver services; or
4. Denial of a 1915(c) home and community based waiver service.

(2) Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(3) Time-limited benefits shall not be extended based on a request for an administrative hearing.

(4) If a request for an administrative hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, the department shall continue to reimburse for nursing facility services until the date that the final order is rendered.

Section 6. Notice of Scheduled Hearing. (1) A scheduled administrative hearing notice shall contain:

- (a) The date, time, and place of the scheduled administrative hearing; and
  - (b) A statement that the local Department for Community Based Services office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.
- (2) An administrative hearing shall be conducted within thirty

(30) days of the date of the request for an administrative hearing unless otherwise authorized by the designated hearing agency[hearing officer].

(3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
- (b) Review the case record relating to the issue; and
- (c) Submit additional information in support of the applicant's or recipient's claim.

(4)(a) If an administrative hearing involves medical issues, a medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review.

(b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be established in writing.

Section 7. Conduct of an Administrative Hearing. (1) An administrative hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(2) A hearing officer shall be impartial and shall disqualify himself or herself as required by KRS 13B.040.

(3) An administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) A designated hearing agency[hearing officer] shall offer to transmit a recommended order by electronic format.

(5) If necessary to receive full information on the issue, a designated hearing agency[hearing officer] may examine each party who appears and the party's witnesses.

(6)(a) A designated hearing agency[hearing officer] may reopen the administrative hearing and take additional evidence as is deemed necessary.

(b) Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Designation of Alternative Hearing Agency and Appeal Board. (1) The secretary of the cabinet may:

- (a) Select a designated hearing agency; or
- (b) Create a designated hearing agency.
- (2) A designated hearing agency shall:
  - (a) Be composed of cabinet employees who shall serve as hearing officers; and
  - (b) Follow all requirements established pursuant to KRS Chapter 13B.
- (3) The secretary of the cabinet may:
  - (a) Select an appeals board; or
  - (b) Create an appeals board.
- (4) An appeals board shall follow all requirements established pursuant to KRS Chapter 13B and KRS 194A.025.

Section 9. Withdrawal or Abandonment of Request. (1) A recipient or authorized representative:

- (a) May withdraw the appeal for an administrative hearing prior to the release of the hearing officer's decision; and
- (b) Shall be granted the opportunity to discuss withdrawal with the recipient's legal counsel or authorized representative prior to finalizing the action.

(2) An administrative hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the administrative hearing.

Section 10[9]. Recommended Order. (1) After an administrative hearing is concluded, the hearing officer shall issue a recommended order in accordance with KRS 13B.110.

(2)(a) A recommended order shall be issued within thirty (30) days of the administrative hearing date, except for a recommended order regarding:

1. A nursing facility level of care or patient status decision;
2. An ICF IID patient status decision;
3. A nursing facility level of care, nursing facility patient status,

or ICF IID patient status decision related to 1915(c) home and community based waiver program participation; or

4. A 1915(c) home and community based waiver service.

(b) A recommended order regarding an item listed in paragraph (a) of this subsection shall be issued within fifteen (15) calendar days of the administrative hearing date.

(3)(a) A copy of the recommended order shall be:

1. Mailed to each party in accordance with KRS 13B.110(4); or

2. Sent by electronic means to any party which requests, during the administrative hearing, that the order be sent by electronic means.

(b) If requested during the administrative hearing, a copy of the recommended order shall be electronically transmitted to a site specified by the applicant or recipient on the date the recommended order is rendered.

Section 11[40]. Exceptions to a Recommended Order. (1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and Family Services, Division of Administrative Hearings within fifteen (15) days from the date that the recommended order is mailed.

Section 12[44]. Final Order or Review of Recommended Order.

(1) The secretary of the Cabinet for Health and Family Services or other party authorized by KRS 13B.010 shall issue a final order:

(a) Within ninety (90) days from the date of the request for an administrative hearing; or

(b) As established in 42 C.F.R. 431.244(f).

(2) In accordance with 42 C.F.R. 431.233, unless a recipient requests a de novo hearing, the review of a recommended order shall consist of a cabinet level review of the record of the administrative hearing.

(b) If an exception to a recommended order was not filed, the information in the record considered in the cabinet level review or final order shall be limited to the information considered at the administrative hearing.

(c) If a recipient requests a de novo hearing, at the de novo hearing either party may offer:

1. Evidence not presented at the hearing below; and

2. The evidentiary record of the fair hearing.

Section 13[42]. Judicial Review of a Final Order. (1) A further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the final order in accordance with KRS 13B.140 and 13B.150.

(2) Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1)(b) of this administrative regulation.

Section 14[43]. Medicaid Case Actions Following Circuit Court Level Appeal Decision. (1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to:

(a) Remain in a nursing facility or an ICF IID during the circuit court appeal process, the department shall reimburse for the nursing facility services or ICF IID services which occurred during the circuit court appeal process; or

(b) Receive a 1915(c) home and community based waiver service during the circuit court appeal process, the department shall reimburse for the service which occurred during the circuit court appeal process.

Section 15[44]. Special Procedures Relating to a Managed Care Participant. (1) For an adverse action toward an enrollee regarding a service that is within the scope of managed care, the requirements governing the MCO internal appeal process and the department's hearing process for the enrollee shall be as

established in 907 KAR 17:010.

(2) For an adverse action by the department toward an enrollee regarding a service that is not within the scope of managed care, the appeals policies and requirements established in this administrative regulation shall apply.

Section 16[45]. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court; or

(c) \$300 for preparatory work and briefs and all other matters incident to an appeal to the:

(a) Court of Appeals; or

(b) Supreme Court of Kentucky.

(2)(a) Enforcement of payment of a fee shall:

1. Not be a matter for the department or the cabinet; and

2. Be a matter between the counsel or agent and the recipient.

(b) The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

(3)(a) The fee limitations stated in subsection (1) of this section shall:

1. Apply to the amount an attorney may charge a recipient or applicant; and

2. Not apply to the amount an attorney may collect from another entity or person who represents the recipient or applicant in all categories of Medicaid.

(b) The amount an attorney may collect from an entity or person who is not a recipient or applicant for representing the recipient or applicant in all categories of Medicaid shall:

1. Be a matter between the attorney and other entity or person; and

2. Not be a matter that involves the department or cabinet.

Section 17[46]. A hearing or an appeal relating to a decision to reclassify or transfer a person with an intellectual disability in a state institution shall be in accordance with the requirements of KRS 210.270 and 907 KAR 1:075.

Section 18[47]. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091; [CHFSRegs@ky.gov](mailto:CHFSRegs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, [jonathant.scott@ky.gov](mailto:jonathant.scott@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(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 authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(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 change this administrative regulation by updating the hearing and appeals process to comply with federal timeline requirements, allow for the cabinet secretary to sign final or recommended orders, update obsolete language, and to make the regulatory language consistent with the terminology of KRS Chapter 13B.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the appeals process to comply with federal timeline requirements, update obsolete language and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects recipients of Medicaid services. Currently, more than 145,000 Kentuckians receive Medicaid Fee for Service services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DMS anticipates no cost imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The clarifications should benefit recipients in being able to better understand the appeals policies and requirements.

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

(a) Initially: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(b) On a continuing basis: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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: This administrative regulation does not impose or increase any fees.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation

applies equally to all those 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? The Department for Medicaid Services will be impacted by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, KRS 194A.030(2), 194A.050(1), 205.231, 205.237, 205.520(3), 42 C.F.R. 431 Subpart E and 42 C.F.R. 483 Subpart E.

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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost as a result of the amendment.

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.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431 Subpart E and 42 C.F.R. 483 Subpart E.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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 205.237 establishes that "any individual claiming public assistance in any proceeding before the appeal board or a court may be represented by counsel; but no counsel shall either charge or receive for such service more than an amount established by the secretary by administrative regulation."

KRS 205.231 establishes appeals, hearing officer and related provisions.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431, Subpart E requires the Medicaid

program's hearing system to provide for a hearing before the agency or an evidentiary hearing at the local level, with a right of appeal to a state agency hearing and the hearing system must meet the due process standards established in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in 42 C.F.R. 431, Subpart E. Additionally, the Medicaid program must satisfy various notice requirements, as well as hearing conduct requirements, among other related requirements.

42 C.F.R. 483, Subpart E requires the Medicaid program to provide a system for a resident of a skilled nursing facility (SNF) or a nursing facility (NF) to appeal a notice from the SNF or NF of intent to discharge or transfer the resident, and for an individual adversely affected by any pre-admission screening resident review (PASRR) determination made by the state in the context of either a preadmission screening or an annual resident review under subpart C of part 483 to appeal that determination. Additionally, the Medicaid program must provide an appeals system that meets the requirements of this 42 C.F.R. 483, Subpart E and 42 C.F.R. 431, Subpart E.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, than federal, requirements.

#### STATEMENT OF EMERGENCY

##### 921 KAR 2:055E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2., preventing the loss of federal funds, by enhancing the timeliness of administrative hearings related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP). The emergency administrative regulation transitions the final order process from the Appeal Board for Public Assistance to the secretary of the Cabinet for Health and Family Services or the secretary's designee, thereby eliminating delays experienced through the optional utilization of an Appeal Board for Public Assistance. An ordinary administrative regulation would not allow the agency to improve timeliness standards to comply with federal requirements; avoid federal findings, costs associated with remedying the findings, and possible federal financial penalties; and improve service delivery to the vulnerable populations that utilize these public assistance programs. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor  
ADAM M. MEIER, Secretary

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

##### 921 KAR 2:055E. Hearings and appeals.

RELATES TO: KRS Chapter 13B, 23A.010, 45.237, 199.892, 205.211, 205.231, 205.237, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 199.8994, 205.231(5), 42 U.S.C. 602, 8624

EFFECTIVE: November 1, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the

Commonwealth. KRS 194A.050(1) requires the secretary 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. 42 U.S.C. 602 and 42 U.S.C. 8624 require states receiving Temporary Assistance for Needy Families (TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for participants and outline this procedure in the applicable state plan. KRS 199.8994(1) requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that [which] is in the best interest of the clients to be served. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

Section 1. Hearing Information. (1) A participant shall be informed of:

- (a) The right to a hearing;
- (b) The procedures for requesting a hearing, as established in Section 3 of this administrative regulation; and
- (c) Who may represent the participant in a hearing, as established in Section 2 of this administrative regulation.

(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.

(3) When an action is taken that[which] affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.

Section 2. Request for a Hearing. (1) An individual shall request a hearing by:

- (a) ~~Completing and submitting a PAFS-78, Request for Hearing or Withdrawal;~~
- (b) Submitting a written request; or
- (c) ~~[(e)]~~ Making an oral request.

(2) The hearing request may be:

- (a) Submitted to the local Department for Community Based Services office; or
- (b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

- (a) Forty (40) days of the date of the advance notice of adverse action;
- (b) Thirty (30) days of the notice of:
  - 1. Denial of an application; or
  - 2. Decrease or discontinuance of an active case; or
- (c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

- (a) For:
  - 1. A delay in requesting a hearing;
  - 2. A delay in requesting a continuation of benefits;
  - 3. Failure to appear for a hearing; or

4. Postponement of a scheduled hearing; and
- (b) If the appellant:
  1. Was away from home during the entire filing period;
  2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;
  3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;
  4. Had a household member who was seriously ill; ~~or~~
  5. Was not at fault for the delay of the request, as determined by the hearing officer; or
  6. Did not receive the notice.

Section 4. Continuation of Assistance Program Benefits. (1) If a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

(a) Ten (10) days of the date on the notice of adverse action; or

(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.

(3) If the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation, subsection (2) of this section shall not apply.

(4) If the action taken by the agency is upheld, continued or reinstated benefits shall be:

- (a) Considered overpayments as defined in KRS 205.211; and
- (b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch, shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

- (a) Hearing process, including the right to case record review prior to the hearing;
- (b) Right to representation;
- (c) Availability of free representation by legal aid or assistance from other organizations within the community; and
- (d) Time and location of the hearing.

(3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:

- (a) Hearing; or
- (b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

- (a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and
- (b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights. (1) In addition to the rights described in Section 5 of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.

(2) The appellant shall have the right to a medical assessment or professional evaluation at the expense of the cabinet by a source:

- (a) Not associated with the original action; and
- (b) Agreeable to both the appellant and the cabinet if:
  1. The hearing involves medical issues; and
  2. The hearing officer considers it necessary.
- (3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:
  - (a) Be in writing; and

(b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:

(a) Request for the postponement is made prior to the hearing; and

(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.

(2) The hearing officer shall decide if a hearing is postponed.

(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:

(a) Scheduled by the hearing officer; and

(b) Conducted in accordance with KRS 13B.080 and 13B.090.

(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.

(3) To secure all pertinent information on the issue, the hearing officer may:

(a) Examine each party or witness who appears; and

(b) If necessary, collect additional evidence from a party.

(4)(a) If consent is obtained from each party to the appeal and from each party required to testify under oath, a telephonic hearing may be conducted.

(b) Parties to a telephonic hearing shall:

1. Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and

2. Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

a. Are introduced as evidence into the hearing record; and

b. Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4)(b) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. A Hearing Officer's[Recommended] Order. (1) After the hearing has concluded, the hearing officer shall draft an[a recommended] order in accordance with KRS 13B.110 that[, which]:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the~~[recommended]~~ order; and

2. Address to which a party in the hearing may send an exception to the~~[recommended]~~ order;~~[and]~~

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal regulations; and

(d) Addresses the parties' arguments.

(2) A copy of the hearing officer's[recommended] order shall be sent simultaneously to the:

(a) Appellant or representative; and

~~(b)[Appeal Board for Public Assistance established in accordance with KRS 205.231; and~~

~~(e)] Department for Community Based Services,["] Division of Family Support.~~

(3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120 and 205.231 sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 11 of this administrative regulation.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the hearing officer's[recommended] order, the party may file a written exception in accordance with KRS 13B.110(4) with the secretary or the secretary's designee[Appeal Board for Public Assistance].



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- (2) A written exception or rebuttal shall:
- (a) Be filed within fifteen (15) days of the date the hearing officer's[recommended] order was mailed;
  - (b) Be based on facts and evidence presented at the hearing;
  - (c) Not refer to evidence that was not introduced at the hearing; and
  - (d) Be sent to each other party involved in the hearing.

Section 12. Final Order. (1) ~~Unless Section 10(3) of this administrative regulation applies, the secretary or the secretary's designee shall issue a final order in accordance with KRS 13B.120 and 205.231.~~[Appeal Board Review. (1) In accordance with KRS 13B.120 and 205.231, the Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the recommended order and subsequent appeal to the:

- (a) Parties to the hearing; and
- (b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:

- (a) Offer the opportunity to:

- 1. File a brief; or
- 2. Request permission to submit new or additional evidence;

and

- (b) State the tentative date on which:

- 1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and
- 2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:

- (a) The records of the hearing; and

(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:

- (a) Submit written arguments; and

(b) Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.

Section 13. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be in accordance with KRS 13B.120 and 205.231.]

(2) The secretary or the secretary's designee[Appeal Board for Public Assistance] may reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the hearing officer's[Appeal Board for Public Assistance's] decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

- 1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;
- 2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;
- 3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;
- 4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v; or
- 5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

(3) A party aggrieved by the[Appeal Board for Public Assistance's] decision of the secretary or the secretary's designee may pursue judicial review of the decision in accordance with:

- (a) KRS 13B.140 to 13B.160; or

- (b) KRS 23A.010[and 13B.150].

Section 13[14]. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order[issued by the Appeal Board for Public Assistance] and

shall include:

- (a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order[issued by the Appeal Board for Public Assistance].

Section 14[15]. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the secretary or the secretary's designee[appeal board];

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or

(d) \$300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

- (a) Appellant and legal counsel agree to the fee; and

(b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

- (a) Be the responsibility of the counsel or agent; and

(b) Not be deducted from the benefits provided to an appellant.[Section 16. Incorporation by Reference. (1) The form, "PAFS-78, Request for Hearing or Withdrawal", 12/28/15, is incorporated by reference.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone: (502) 564-3703, email: [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the hearing requirements for multiple public assistance programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes through its establishment of hearing requirements for K-TAP, LIHEAP, SSP, and CCAP applicants and recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation currently assists in the effective administration of the statutes through its establishment of hearing requirements for multiple public assistance programs.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation improves the timeliness of these hearings through the allowance of a hearing officer's order to become a final order if there is no exception or rebuttal and through the transition of the final order process from the Appeal Board for Public Assistance to the cabinet secretary or the secretary's designee. The amendment also removes a required form providing additional flexibility on the part of an individual to file a request for hearing. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to improve the timeliness of hearings, thereby preserving federal funding through the avoidance of federally imposed corrective action or federal financial penalty. In addition, the amendment is necessary to align hearing processes across public assistance programs administered by the department.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its enhancement of hearings' timeliness and consistency in hearing procedures across public assistance programs administered by the department.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhancements to hearing procedures for improved timeliness and consistency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is an average of 2,300 hearings for all public assistance programs, including the Supplemental Nutrition Assistance Program (SNAP), 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: There is no new action required on the part of individuals seeking appeals or appellants.

(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 new cost for individuals seeking appeals or appellants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals seeking appeals and appellants will have greater flexibility in the means by which they can request a hearing and will benefit from enhanced timeliness and consistency across public assistance programs administered by the department.

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

(a) Initially: There is no anticipated new cost for the administrative body to implement the regulatory amendment.

(b) On a continuing basis: There is no anticipated new cost for the administrative body to implement the regulatory amendment. The amendment is anticipated to preserve the state's federal funding for public assistance programming.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under the Temporary Assistance for Needy Families Block Grant, the Low-Income Home Energy Assistance Block Grant, and the Child Care and Development Fund Block Grant, along with state general funds, are used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050, 199.8994, 205.231

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

#### 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 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 13B.170, 194A.010, 194A.050, 199.8994, 205.231, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

(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? This administrative regulation will generate no revenue for government in its first year.

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

(c) How much will it cost to administer this program for the first year? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY  
921 KAR 3:060E**

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2., preventing the loss of federal funds, by enhancing the timeliness of administrative disqualification hearings for the Supplemental Nutrition Assistance Program. The emergency administrative regulation facilitates the transition of the final order process from the Appeal Board for Public Assistance to the secretary of the Cabinet for Health and Family Services or the secretary's designee, thereby eliminating delays experienced through the optional utilization of an Appeal Board for Public Assistance. An ordinary administrative regulation would not allow the agency to improve timeliness standards to comply with federal requirements; avoid federal findings, costs associated with remedying the findings, and possible federal financial penalties; and improve service delivery to the vulnerable populations that utilize this public assistance program. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor  
ADAM M. MEIER, Secretary

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

**921 KAR 3:060E. Administrative disqualification hearings and penalties.**

RELATES TO: KRS Chapter 13B, 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

EFFECTIVE: November 1, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for these violations. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include the issuance of an order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet

suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

(a) Cabinet's suspicion that an IPV has been committed;

(b) Amount and period of the overpayment for the suspected IPV; and

(c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) ~~The cabinet shall use:~~

~~(a) The FS-80, 4/15, and the FS-80, Supplement A, 9/14; or~~

~~(b) On or after December 28, 2015, the FS-80, 12/15, and the FS-80, Supplement A, 12/15.~~

(5) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual; or

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050.

(6) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(7) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(8) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14.

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

(a) Conduct the hearing without the household member or representative;

(b) Consider the evidence; and

(c) Determine whether an intentional program violation was committed based on clear and convincing evidence.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

- (a) Household was not represented at the hearing;
- (b) Individual was determined to have committed an IPV;

(c) 1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) ~~Secretary or the secretary's designee [Appeal Board for Public Assistance]~~ is not considering the same matter.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or

(c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

- (a) Reinstate the individual, if eligible; and
- (b) In accordance with 7 C.F.R. 273.17, restore benefits:
  - 1. That were lost as a result of the disqualification; and
  - 2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

- (a) Consequences of consenting to disqualification;
- (b) Disqualification; and
- (c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

- (a) Committed an IPV, as determined by:
  - 1. An administrative disqualification hearing; or
  - 2. A court; or
- (b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

- (a) Administrative disqualification hearing determines that an IPV was committed; or
- (b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by

a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

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

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012;

~~(b) ["FS-80, Notice of SNAP Suspected Intentional Program Violation", 4/15;~~

~~(c) ["FS-80, Notice of SNAP Suspected Intentional Program Violation", 12/15;~~

~~(d) ["FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 9/14;~~

~~(e) ["FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 12/15; and~~

~~(d) [(f)] "FS-111, Deferred Adjudication Disqualification Consent Agreement", 9/14.~~

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, Phone: (502) 564-3703, Email: [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program (SNAP) and the penalties that shall be applied for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for determinations and penalties regarding SNAP IPV's.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of procedures and penalties for SNAP IPV's.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of SNAP IPV procedures and penalties.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will facilitate the transition of final orders from the Appeal Board for Public Assistance to the secretary or the secretary's designee. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to improve the timeliness of administrative hearings provided in SNAP, thereby avoiding federal corrective action, federal financial penalty, and hardship on appellants.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its improvement and support of timely SNAP administrative hearings.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment will assist in the effective administration of the statutes through its facilitation of more timely SNAP hearings and congruency with hearings conducted for other public assistance programs administered by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1200 to 1300 administrative disqualification hearings conducted yearly.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required on the part of appellants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated new cost for appellants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will improve the timeliness of administrative hearings, thereby provisioning the appellant with a more timely decision on their case.

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

(a) Initially: There is no anticipated new cost for the administrative body to implement the regulatory amendment.

(b) On a continuing basis: There is no anticipated new cost for the administrative body to implement the regulatory amendment. The amendment is anticipated to preserve the state's federal SNAP funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal SNAP and state general funds are used for the implementation and enforcement of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.15

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.15

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

#### 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 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 13B.170, 194A.010, 194A.050, 7 C.F.R. 273.15

(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? This administrative regulation will generate no revenue for government in its first year.

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

(c) How much will it cost to administer this program for the first year? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 921 KAR 3:070E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2., preventing the loss of federal funds, by enhancing the timeliness of fair hearing procedures for the Supplemental Nutrition Assistance Program. The emergency administrative regulation transitions the final order process from the Appeal Board for Public Assistance to the secretary of the Cabinet for Health and Family Services or the secretary's designee, thereby eliminating delays experienced through the optional utilization of an Appeal Board for Public Assistance. An ordinary administrative regulation would not allow the agency to improve timeliness standards to comply with federal requirements; avoid federal findings, costs associated with remedying the findings, and possible federal financial penalties; and improve service delivery to the vulnerable populations that utilize this public assistance program. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

ADAM M. MEIER, Secretary

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

921 KAR 3:070E. Fair hearings.

RELATES TO: KRS Chapter 13B, 23A.010, 45.237, 205.231, 7 C.F.R. 273.15

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

## VOLUME 45, NUMBER 6 – DECEMBER 1, 2018

EFFECTIVE: November 1, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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 necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.15 requires the agency administering SNAP to provide a hearing system for any SNAP applicant or recipient who is dissatisfied with an agency decision or action. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program.

Section 1. Opportunity for Fair Hearing. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:

- (a) On the part of the cabinet; and
- (b) That affects the SNAP benefits of the household.
- (2) A fair hearing shall be conducted:
  - (a) On a state level;
  - (b) By a hearing officer assigned by the Division of Administrative Hearings[~~—Families and Children Administrative Hearings Branch~~]; and
- (c) At:
  1. The local office administering the benefits of the appellant;  
or
  2. An alternate site, if the appellant:
    - a. Is unable to travel to the local office; and
    - b. Requests an alternate site.
- (3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.
- (4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).
- (5) An administrative hearing shall be conducted in accordance with KRS Chapter 13B, this administrative regulation, the Correspondence from the Office of Attorney General dated June 4, 2014, and the Correspondence from the Office of Attorney General dated April 5, 2012.

Section 2. Notification of Hearing Rights. (1) When a participant applies, he or she shall receive written notification of the:

- (a) Right to a hearing;
- (b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and
- (c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:
  1. Legal counsel;
  2. A relative;
  3. A friend; or
  4. An individual to act on behalf of the participant.
- (2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:
  - (a) An action is taken that affects the benefits of the participant;  
or
  - (b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.
- (3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. Timeframe for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing

to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a SNAP household may request a hearing on any cabinet action.

(3) If a hearing officer determines an appellant meets good cause criteria in accordance with Section 8 of this administrative regulation, the appellant shall be granted an additional thirty (30) days to submit a hearing request.

Section 4. Request for a Hearing. (1) The request for a hearing shall clearly state the reason for the request.

(2) If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.

(3) In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.

(4) Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:

- (a) Help an appellant with a hearing request; and
- (b) Make available, without charge, the materials necessary for an appellant to:
  1. Determine whether a hearing may be requested; or
  2. Prepare for a hearing.

(5) As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Notice of Hearing. (1) The Division of Administrative Hearings[~~—Families and Children Administrative Hearings Branch~~] shall acknowledge a hearing request by issuing a notice of hearing.

(2) The notice of the hearing shall:

- (a) Comply with the requirements of KRS 13B.050(3), subject to the exemption granted by the attorney general in the Correspondence from the Office of Attorney General dated June 4, 2014. The notice shall provide all parties involved with ten (10) days advance written notice of an administrative hearing, and the notice shall not be less than ten (10) days prior to the hearing, unless requested by the appellant;
- (b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and
- (c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(~~l~~)(~~4~~), unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

(4) The appellant may:

- (a) Waive the right to certified mail delivery under KRS 13B.050; and
- (b) Select another method of delivery, such as electronic or first class mail.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:

- (a) Acknowledge the request in accordance with Section 5 of this administrative regulation;
  - (b) Conduct a hearing; and
  - (c) Issue a final order.
- (2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:

- (a) Within ten (10) days of the final order; or
  - (b) With the next issuance following receipt of the final order.
- (3) If an appellant requests a postponement of a hearing, the:
- (a) Hearing shall be postponed;
  - (b) Postponement shall not exceed thirty (30) days from the request for the postponement; and
  - (c) Time limit for issuing a final order may be extended for the



same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request does not meet the criteria specified in Section 3 of this administrative regulation;

(b) Appellant submits a written request to withdraw the hearing request; or

(c) Appellant or representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or

2. Establishing good cause for failure to appear as ~~described~~~~[defined]~~ in subsection (2) of this section, within ten (10) days.

(2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the notice;

(c) Moved, resulting in a delay in receiving or failure to receive the notice;

(d) Or other household member had a serious illness;

(e) Was not at fault for the delay, as determined by the hearing officer; or

(f) Did not receive the notice.

(3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Final Order of Dismissal by the Hearing Officer.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:

(a) Issues of the hearings are based on the same or related circumstances; and

(b) Appellant receives prior notice of the hearings being combined.

(2) If a fair hearing and an administrative disqualification hearing are combined, the:

~~[a)]~~ Timeframe for conducting an administrative disqualification hearing specified in 921 KAR 3:060, Section 4, shall be followed; and

~~[b)] Thirty (30) day advance notice period required by 921 KAR 3:060, Section 3, may be waived if requested by the appellant].~~

(3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:

(a) The amount of the claim; and

(b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:

(a) Individual issues of fact are not disputed; and

(b) The issues relate to the same state or federal:

1. Laws;

2. Administrative regulations; or

3. Policy.

(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.

(2) The appellant shall be informed that an agency conference:

(a) Is optional; and

(b) Shall not delay or replace the fair hearing process.

(3) A fair hearing shall be dismissed if:

(a) An agency conference leads to an informal resolution of the dispute; and

(b) The appellant makes a written withdrawal of the request for a hearing.

(4) An agency conference shall be attended by the:

(a) Appellant's caseworker;

(b) Local office supervisor; and

(c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:

(a) Examine:

1. The contents of the case file; and

2. All documents and records to be used at the hearing;

(b) Present the case or have the case presented by a representative or legal counsel;

(c) Bring witnesses, friends, or relatives;

(d) Present arguments without undue interference;

(e) Submit evidence to establish the pertinent facts and circumstances of the case; and

(f) 1. Question or refute testimony or evidence; and

2. Cross-examine an adverse witness.

(2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.

(3) Confidential information, such as the following, shall be protected from release:

(a) Names of individuals who have disclosed information about the appellant's household; and

(b) The nature or status of pending criminal prosecutions.

(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:

(a) Confidential information as specified in subsection (3) of this section;

(b) Documents, testimony, or records irrelevant to the hearing; and

(c) Other information for which the appellant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:

(a) Is employed by the cabinet's Division of Administrative Hearings~~], Health and Family Services Administrative Hearings Branch]~~; and

(b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).

(2) When conducting a hearing, a hearing officer shall:

(a) Have the authority set forth in KRS 13B.080;

(b) In accordance with 7 C.F.R. 273.15(m), order an independent medical assessment or professional evaluation;

1. From a source:

~~a. [4.]~~ Not associated with the original action; and

~~b. [2.]~~ Agreeable to both the appellant and the cabinet; and

2. If:

a. The hearing involves medical issues; and

b. The hearing officer considers it necessary;

(c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 12~~[13]~~;

(d) Issue an order:

1. In accordance with KRS 13B.110; and

2. As specified in Section 14 of this administrative regulation; and

(e) Issue a final order in accordance with~~[under]~~ Section (7)~~[9]~~ of this administrative regulation.

Section 14. Hearing Officer's Order. (1) After the hearing has concluded, the hearing officer shall draft an order that~~[which]~~:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the order; and

2. Address to which a party in the hearing may send an exception to the order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal regulations; and

(d) Addresses~~[5-Address]~~ the parties' arguments.

(2) A copy of the order shall be sent simultaneously to the:

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(a) Appellant or representative; and  
(b) Department for Community Based Services, [1] Division of Family Support.

(3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q) sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 15 of this administrative regulation.

(4) If necessary, benefits of the appellant shall be adjusted:

(a) Based on a hearing officer's order that becomes a final order in accordance with subsection (3) of this section; and

(b) Within ten (10) days of the hearing officer's order becoming the final order.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the hearing officer's order, the party may file a written exception with the secretary or the secretary's designee ~~Appeal Board for Public Assistance established in accordance with KRS 205.231~~.

(2) A written exception or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the hearing officer's order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 16. Final Order. (1) Unless Section 14(3) of this administrative regulation applies, the secretary or the secretary's designee shall issue a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q). ~~Appeal Board Review. (1) The Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the hearing officer's order to the:~~

~~(a) Parties to the hearing; and~~

~~(b) Commissioner of the Department for Community Based Services.~~

~~(2) The acknowledgement shall:~~

~~(a) Offer the opportunity to:~~

~~1. File a brief; or~~

~~2. Request permission to submit new or additional evidence; and~~

~~(b) State the tentative date on which:~~

~~1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and~~

~~2. The Appeal Board for Public Assistance shall consider the appeal.~~

~~(3) The Appeal Board for Public Assistance shall consider:~~

~~(a) The records of the hearing; and~~

~~(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.~~

~~(4) If an appeal is being considered on the record, the parties may:~~

~~(a) Submit written arguments; and~~

~~(b) Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.~~

~~(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.~~

Section 17. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), (q).

(2) If necessary, benefits of the appellant shall be adjusted:

(a) Based on the decision of the secretary or the secretary's designee ~~Appeal Board for Public Assistance~~; and

(b) Within ten (10) days of the ~~Appeal Board for Public Assistance's~~ decision of the secretary or the secretary's designee.

(3) An aggrieved party may petition for judicial review in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010 ~~A party aggrieved by the Appeal Board for~~

~~Public Assistance's decision may pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150.~~

Section 17[48]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012; and

(b) The "Correspondence from the Office of Attorney General dated June 4, 2014", June 4, 2014.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone: (502) 564-3703, email: [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish SNAP fair hearing procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes through its establishment of fair hearing procedures for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the statutes through its establishment of SNAP fair hearing procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation modifies the final order authority from the Appeal Board for Public Assistance to the cabinet secretary or the secretary's designee. In addition, the amendment makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure timely SNAP fair hearings for regulated entities and to avoid federal financial penalty or correction action that may result from untimely hearings.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by ensuring timely fair hearings in accordance with federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its facilitation of improved timeliness for SNAP fair hearings and enhanced procedural congruency among hearings for public assistance programs administered by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is an average of 2,300 hearings for all public assistance programs, including SNAP, 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: There will be no new action required on the part of appellants.

(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 new cost required on the part of appellants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will improve the timeliness of administrative hearings, thereby provisioning the appellant with a more timely decision on their case.

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

(a) Initially: There is no anticipated new cost for the administrative body to implement the regulatory amendment.

(b) On a continuing basis: There is no anticipated new cost for the administrative body to implement the regulatory amendment. The amendment is anticipated to preserve the state's federal SNAP funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal SNAP and state general funds are used for the implementation and enforcement of this administrative regulation.

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

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

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

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.15

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.15

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

#### 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 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 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

STATE BOARD OF ELECTIONS  
(As Amended at ARRS, November 13, 2018)

31 KAR 4:100. Evaluation of precinct election officers.

RELATES TO: KRS 117.045

STATUTORY AUTHORITY: KRS 117.045(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.045(1) requires the State Board of Elections to promulgate an administrative regulation establishing evaluation procedures which county boards of elections may use to qualify persons nominated to serve as precinct elections officers. This administrative regulation establishes those evaluation procedures.

Section 1. In evaluating if a person nominated to serve as a precinct election officer is qualified to serve in that capacity, a county board of elections may use the following evaluation procedures:

(1) Determine if the person submitted a signed statement in accordance with KRS 117.045(2);

(2) Determine if the person meets the qualifications set forth in KRS 117.045(9); and

(3) Determine if the person has a history of refusing to follow election procedures or has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.

Section 2. A county board of elections shall refuse to appoint a person nominated to serve as a precinct election officer if it determines that the person is not qualified based on the evaluation procedures set forth in Section 1 of this administrative regulation.

Section 3. Once the county board of elections has appointed the precinct election officers, the full name, address, phone number, and Social Security number, if available, of each person appointed shall be submitted to the State Board of Elections within three (3) days of the appointment on SBE 22, List of Appointment of Precinct Election Officers.

Section 4. Incorporation by Reference. (1) "List for Appointment of Precinct Election Officers", SBE 22, ~~February 2007~~ ~~(edition)~~, is incorporated by reference.

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

ALISON LUNDERGAN GRIMES, Secretary of State, Chair of the State Board of Elections

APPROVED BY AGENCY: June 5, 2018

FILED WITH LRC: June 21, 2018 at noon

CONTACT PERSON: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [Lindsay.thurston@ky.gov](mailto:Lindsay.thurston@ky.gov).

AUDITOR OF PUBLIC ACCOUNTS  
(As Amended at ARRS, November 13, 2018)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-7507[-68.210]

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate

administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 5(1)(a);

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Section 5(1)(b); and

(3) ~~["Fiscal Court Audit Guide"]~~ ~~Audit Program for Fiscal Courts~~, ~~[""]~~ issued by the Auditor of Public Accounts, July 20[September 14], 2018 ~~July 1, 2017~~.

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the ~~["Fiscal Court Audit Guide"]~~ ~~Audit Program for Fiscal Courts~~ ~~[""]~~ and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference. (1) The "Fiscal Court

Audit Guide~~[Audit Program for Fiscal Courts]~~, "Auditor of Public Accounts, July 20~~[September 14]~~, 2018~~[July 1, 2017]~~," is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

L. CHRISTOPHER HUNT, Executive Director

For MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 12, 2018 at 2 p.m.

CONTACT PERSON: L. Christopher Hunt, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601, phone 502-209-2863, fax 502-564-2912, email [LChris.Hunt@ky.gov](mailto:LChris.Hunt@ky.gov).

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, November 13, 2018)**

**103 KAR 15:050. Filing dates and extensions.**

RELATES TO: KRS 131.081(11), 131.170, 136.100, 141.042, 141.160, 141.170, 141.300

STATUTORY AUTHORITY: KRS 131.130~~[(4)]~~, 141.042~~[(6)]~~, 141.050~~[(4)]~~, 141.300~~[(6)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.081(11)~~[(131.081(10))]~~, 131.170, 141.042~~[(7)]~~~~[(141.042(6))]~~, and 141.170 authorize the Department of Revenue to grant a taxpayer an extension of time to file a tax return or to pay an installment of estimated income or limited liability entity~~or limited liability entity~~ tax. This administrative regulation establishes the procedures to be used by an individual, a corporation, or a noncorporate entity to obtain an extension of time to file an income or limited liability entity tax return or to pay an installment of estimated income tax for a taxable year.

Section 1. Definitions. (1) "Corporation" means a corporation as defined by~~[in]~~ KRS 141.010~~(4)~~~~[(141.010(24))]~~ an S corporation as defined by~~[in]~~ KRS 141.010~~(25)~~~~[(141.010(27))]~~ a limited liability company taxed as a corporation, or other entity taxed as a corporation for Kentucky income tax purposes.~~[(2)]~~

(2) "Date prescribed by KRS 136.100 or 141.160" means the 15th day of the fourth month following the close of the taxable year.~~[(2)]~~~~and~~~~[(2)]~~

(3) "Noncorporate entity" means a partnership, a limited liability company treated as a partnership, a trust, a fiduciary, or other entity not taxed as a corporation for Kentucky income tax purposes.

Section 2. An Extension of Time for Filing an Income or Limited Liability Entity~~[Corporation]~~~~[Limited Liability Entity]~~ Tax Return. (1) Pursuant to KRS 131.081(11) and 141.170, a taxpayer may obtain an extension of time for filing a Kentucky income tax return by means of either a federal extension or a Kentucky extension.

(2) Federal extension.

(a) A taxpayer granted an extension of time for filing a federal income tax return shall be granted the same extension of time for filing a Kentucky income tax return for the same taxable year if a copy of the federal extension approval or request for an automatic extension is attached to the Kentucky income tax return when it is filed.

(b) An extension of time for filing a Kentucky income tax return granted pursuant to this subsection shall be valid for the extension period granted by the Internal Revenue Service.

(c) A copy of the federal extension shall not be mailed to the department on or before the date prescribed by KRS 141.160, except as provided in Section 3 of this administrative regulation.

(3) Kentucky extension. A taxpayer may file an application for extension with the department, on or before the date prescribed by

KRS 141.160 for filing the return.

(a) An individual or a noncorporate entity shall file Form 740EXT~~[an]~~ "Application for Extension of Time to File~~[Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky]~~", Revenue Form 40A102.

1. An individual or a noncorporate entity shall state the reason for the request on the application for extension. Inability to pay the tax liability shall not be a valid reason.

2. An individual or a noncorporate entity shall be notified by mail if the application for extension is denied. A copy of an approved application for extension shall not be returned to the individual or noncorporate entity.

3. In accordance with KRS 141.170~~[In accordance with KRS 141.170]~~ An individual or a noncorporate entity shall be granted an extension of time to file for six (6) months unless the application for extension is denied.

4. In accordance with KRS 141.170~~[In accordance with KRS 141.170]~~ An individual outside the United States shall be granted an extension of time to file for twelve (12) months unless the application for extension is denied.

5. A copy of the signed and dated application for extension shall be attached to the income tax return when it is filed.

(b) A corporation shall file Form 720EXT~~[an]~~ "Extension of Time to File Kentucky Corporation/LLET Return", Revenue Form 41A720SL.

1. A corporation shall be granted an extension of time to file for six (6) months.

2. A copy of an approved application for extension shall not be returned to the corporation.

3. The extension shall become valid when mailed to the department on or before the date prescribed by KRS 141.160 for filing the return.

4. The corporation shall attach a copy of the signed and dated application for extension to its "Kentucky Corporation Income Tax And LLET Return", Revenue Form 71A720, when it is filed.

(4) An extension of time for filing a mandatory nexus~~[mandatory nexus]~~ consolidated~~[Kentucky corporation]~~ income tax return shall constitute an extension of time for filing for each member of the affiliated group.

(5) An extension of time for filing a corporation income tax return shall constitute an extension of time for filing a limited liability entity tax return for the same taxable year.

Section 3. Payment of Tax. (1) An extension of time to file an income or limited liability entity tax return shall not constitute an extension of time to pay the tax.

(2) A taxpayer shall determine if an amount of tax remains unpaid on or before the date prescribed by KRS 136.100 or 141.160 for filing the return.

(3) If tax remains unpaid, a check for the amount of the unpaid tax shall be submitted to the department on or before the date prescribed by KRS 136.100 or 141.160 for filing the return along with the Kentucky extension or a copy of the federal extension.

(4) A corporation shall write its Kentucky Account Number in the upper right hand corner of the federal extension submitted.

(5) An affiliated group filing a mandatory nexus consolidated income tax return and making a payment of tax with the application for extension shall file a Kentucky extension to ensure the proper processing of payments.

Section 4. Interest and Penalties. (1) Statutory interest shall be paid from the date prescribed by KRS 136.100 or 141.160 for filing the return until the tax is paid.

(2) If the envelope bearing the return is postmarked on or before the filing date, the~~[a]~~~~[the]~~ late filing penalty prescribed by 131.180~~[prescribed by KRS 131.180]~~ shall not apply.

Section 5. Extension of Time to Pay Estimated Income Tax. (1) A request for an extension of time to pay an installment of estimated tax prescribed by KRS 141.042 and 141.300 shall be submitted to the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601~~[40620]~~.

(2) The request shall state a basis for the extension.



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(3) An extension of time to pay an installment of estimated tax shall be granted for thirty (30) days under exceptional circumstances.

(4) Interest shall be paid from the due date of the installment of estimated tax until the tax is paid.

Section 6. The forms and materials listed herein may be obtained or inspected, subject to applicable copyright law, from 8:00 a.m. until 4:30 p.m. at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, on the department Web site at <http://revenue.ky.gov>, or at a Kentucky Department of Revenue Taxpayer Service Center during their hours of operation.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy/Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3874, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov).

### FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, November 13, 2018)

**103 KAR 15:060. Estimated tax; amended declarations; short years.**

RELATES TO: KRS 141.042, 141.044, 141.300, 141.305, 141.990

STATUTORY AUTHORITY: KRS 131.130[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws.~~[This administrative regulation is specifically required by]~~ KRS 141.042(6), 141.300(6), and 141.305(6) require the department to provide for amended and short-year declarations of estimated tax. This administrative regulation establishes requirements for the declarations of estimated tax for individuals and corporations.

Section 1. General. A declaration of estimated~~[estimate]~~ tax return for a short taxable year shall be filed by any individual whose income exceeds \$5,000~~[\$2,000]~~ from which Kentucky tax is not withheld, and by any corporation whose Kentucky income tax liability for the short taxable year can reasonably be expected to exceed \$5,000. However, no declaration is required of an individual if the estimated tax is less than \$500~~[forty (40) dollars]~~. A short taxable year contains more than five (5) months and less than twelve (12) months. A declaration is not required of any taxpayer for a period of less than five (5) months.

Section 2. Time for Filing. (1) Individuals. A declaration for a short taxable year shall be filed at the time required by KRS 141.300(3).

(2) Corporations. A declaration for a short taxable year shall be filed at the time required by KRS 141.042(3).

Section 3. Payment. (1) Individuals. Estimated Kentucky income tax for the short taxable year shall be paid at the times prescribed by KRS 141.305(1) except that any installments unpaid at the close of the short taxable year shall be paid when the income tax return is filed.

(2) Corporations. Estimated Kentucky income tax for the short taxable year shall be paid at the times prescribed by KRS 141.044(1) except that any installments unpaid at the close of the short taxable year shall be paid when the income tax return is filed.

Section 4. Fiscal Years. Fiscal year taxpayers shall substitute corresponding dates for dates prescribed for calendar year taxpayers.

Section 5. Penalties. Individuals and corporations which fail to

file and pay declarations of estimated tax for the short taxable years are subject to penalties contained in KRS 141.990.

Section 6. Amended Declarations. Individuals and corporations may file amended declarations of estimated income tax during any interval between installment dates. If an amended declaration is filed, any remaining installment(s) shall be adjusted to reflect the amendment. An amended declaration made after the third installment shall be paid in full when the amendment is filed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov).

### FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Income Taxation (As Amended at ARRS, November 13, 2018)

**103 KAR 15:180. Kentucky new markets development program tax credit.**

RELATES TO: KRS 131.131, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

STATUTORY AUTHORITY: KRS 141.433(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) requires the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity (CDE) in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit authorized by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is published by the department and filed by a CDE with the department for certification as a qualified equity investment.

(3) "Application~~[Applications]~~~~[Application]~~ fee" means a \$1,000 nonrefundable cashier's check~~[that shall be]~~ attached to the application at the time of filing with the department.

(4) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(5) "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(6) "Certification form" means Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification, that is published by the department and filed by a CDE certifying to the department receipt of a cash investment.

(7) "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

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

(9) "Department's approval" means certified by the department as provided by KRS 141.433(3).

(10) "Identification number" means the:



- (a) Social Security Number for an individual;
- (b) Federal Employer Identification Number for a general partnership, estate, or trust; or
- (c) Kentucky Corporation/LLET Account Number for a corporation or limited liability pass-through entity.
- (11) "Long-term debt security" is defined by KRS 141.432(3).
- (12) "Notice of recapture" means Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture, that is published by the department and sent to the CDE and each taxpayer from whom a credit is to be recaptured as a final order of recapture.
- (13) "Performance fee" is defined by KRS 141.433(8).
- (14) "Qualified active low-income community business" is defined by KRS 141.432(5).
- (15) "Qualified community development entity" is defined by KRS 141.432(6).
- (16) "Qualified equity investment" is defined by KRS 141.432(7).
- (17) "Qualified low-income community investment" is defined by KRS 141.432(8).
- (18) "Tax credit" is defined by KRS 141.432(9).
- (19) "Taxpayer" is defined by KRS 141.432(10).

Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that seeks to have an equity investment or long-term debt security certified by the department as a qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an application with the department.

(2) The department shall notify the CDE within thirty (30) days after receipt of the application whether the application is approved or denied.

(a) If the department intends to deny the application, the CDE shall be notified in writing by the department of the reason for the denial, and the CDE may correct the application as provided by KRS 141.433(2).

(b) If the department finds that the application is in compliance with KRS 141.432 to 141.434, a copy of the application shall be returned to the CDE with written notice of the department's approval.

(c) 1. The department shall:

a. Accept an application on or after July 15, 2019,~~[2016]~~, if the application is received via hand-delivery, mail, express mail, or courier; and

b. Not accept an application received via facsimile, CD-Rom, CD, or electronic means.

2. The date that the application is stamped received by the Office of Income Taxation, Division of ~~Corporation~~Corporate Tax, Tax Credits Section, shall be the date that the application is recorded as received pursuant to the provisions of KRS 141.133.

3. An application received prior to July 15, 2019,~~[2016]~~, shall be recorded as received on July 15, 2019,~~[2016]~~.

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

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

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

(3) The type of entity of the CDE for Kentucky income tax purposes included in the application;

(4) The signature of the person completing the application and the date signed;

(5) The total number of taxpayers making qualified equity investments;

(6) The total amount of qualified equity investments for all taxpayers;

(7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. 45D(c);

(8) ~~(a)~~ A statement that;

1. The entity has received a new markets tax credit allocation from the CDFI Fund;

2. [which]~~[that]~~ Includes the Commonwealth of Kentucky within

the service area as set forth in the allocation ~~[f]~~i and

3. Includes the date of the allocation agreement.

~~(b)~~ A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) Proof of current certification with the CDFI Fund that includes the original application to CDFI and all subsequent updates;

(10) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws that describe the service area, or other documentation that describes the service area shall be attached to the application;

(11) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by KRS 141.432(5);

(12) The name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment;

(13) A signed certification indicating that the application has been executed by the executive officer of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents and statements, is true, correct and complete;

(14) The application fee; and

(15) The refundable performance fee.

Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the approved application is received by the CDE, the CDE shall issue qualified equity investments in exchange for cash in the amount of the certified purchase prices contained in the application.

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department a certification form.

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of the certification form shall be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

(4) If the department is not satisfied that the cash amount of the qualified equity investment was received by the CDE, the department shall notify the CDE in writing of the reason. If the CDE does not agree with the department's written determination, the CDE may file a protest as provided by KRS 131.110.

Section 5. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) ~~that~~which~~[that]~~ would result in the recapture of any portion of the tax credit previously approved:

(a) The CDE shall notify the department upon discovery of the event; or

(b) The department, upon discovery of the event or after receiving notice from the CDE of the event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).

(2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on a notice of recapture.

(3) If the taxpayer is a pass-through entity, a notice of recapture shall also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

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VOLUME 45, NUMBER 6 – DECEMBER 1, 2018

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, November 13, 2018)

103 KAR 17:010. Residence.

RELATES TO: KRS 141.010, 141.020

STATUTORY AUTHORITY: KRS 131.130[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue to promulgate administrative regulations to prescribe tax return filing requirements for residents, part-year residents, and nonresidents. This administrative regulation provides guidelines for determining whether an individual[a person] qualifies as a resident, part-year resident, or nonresident for Kentucky income tax purposes[and provides special instruction to cover some of the more common problem areas].

Section 1. Definitions. (1) "Domicile" means the place where an individual has established permanent residency.

(2) "Nonresident" is defined by KRS 141.010(18).

(3) "Nonresident citizen" means an individual residing in a foreign country who may file federal income tax returns as a nonresident citizen.

(4) "Part-year resident" is defined by KRS 141.010(20).

(5) "Resident" is defined by KRS 141.010(24).["Nonresident" is defined by KRS 141.010(18).

(2) "Part-year resident" is defined by KRS 141.010(20).

(3)[Resident:]["Resident" is defined by KRS 141.010(24).]  
[means any individual domiciled within Kentucky on the last day of the taxable year and includes any individual who spends more than 183 days in Kentucky and maintains a place of abode in Kentucky during this period. All other individuals are nonresidents.]

Section 2. Nonresident Requirements.[To qualify as a nonresident, the taxpayer shall submit proof of his bona fide intention to reside permanently elsewhere before the last day of the taxable year, and that he has spent less than 183 days in Kentucky.] If any individual[person] who has moved out of Kentucky returns to Kentucky within six (6) months from the time he had moved, it shall be construed that the removal from Kentucky was not intended to be permanent and the individual[such person] shall be considered a resident, or part-year resident during the time in which his abode may have been elsewhere. Any individual[person] changing his domicile during a taxable year may also be required to furnish evidence of compliance with requirements of the other state with respect to taxation and qualifications as a resident citizen.[Persons residing in Kentucky and living part of the year in other states will be considered residents of Kentucky unless it can be shown that abode in another state is of permanent nature, and that less than 183 days were spent in Kentucky.]

Section 3. Domicile. [Generally, a domicile is the place where an individual has established permanent residency][resident]. A domicile once obtained continues until a new domicile[one] is acquired. Domicile is not changed by removal for a definite period or for incidental purposes. To constitute a change, there shall[must] be intent to change, actual removal, and a new abode.

Section 4. Nonresident Citizens. An individual residing in a foreign country who may[is permitted to] file federal income tax returns as a nonresident citizen, and who immediately prior to residing in a foreign country was domiciled in Kentucky, is presumed to be a [full-time] Kentucky resident[and is required to file a][resident] [Kentucky income tax return as such]. An[Such] individual may, however, overcome this presumption by presenting sufficient evidence that the Kentucky domicile has been abandoned.

Section 5. Federal Employees. Federal employees working outside of Kentucky, but having a domicile in Kentucky are taxable

as residents. Individuals[Such persons], once domiciled in Kentucky, are considered Kentucky residents if a domicile has not been established outside of Kentucky[in another district, state, or U.S. territory][elsewhere]. If the individual's domicile is claimed to be outside Kentucky, the requirements of Section 3 of this administrative regulation shall[must] be met.

Section 6. Military Personnel. Under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, a member of the Armed Forces retains the domicile which he had when he entered military service. Individuals[Persons] domiciled in Kentucky at the time of induction will continue to be liable for the payment of Kentucky income taxes on all income regardless of where their military services are performed. However, military personnel (usually career personnel) may change their domicile from Kentucky to another state as any other individual. Conclusive evidence shall[must] be submitted showing that their Kentucky domicile has been abandoned and a new domicile established outside of Kentucky[in another district, state, or U.S. territory][state].

Section 7. Reciprocity States. (1) Kentucky has reciprocal tax agreements with the states of Indiana, Illinois, Michigan, Ohio, Virginia, West Virginia, and Wisconsin. These agreements provide that salaries and wages earned in Kentucky by residents of those states are exempt from Kentucky income tax. Kentucky residents are exempt from income tax, imposed by these[such] states, on salaries and wages earned there. The Virginia Agreement, however, applies only to taxpayers who commute daily to their employment in the nonresident state.

(2) A Kentucky resident, working in one (1) of the states listed in subsection (1) of this section shall[above, must] file the required certificate of nonresidence with his employer if they wish for tax to not be withheld by that employer. That certificate is the employer's authority to exempt the employee's income from withholding. A resident of a state listed in subsection (1) of this section shall[above must] file[Revenue] Form K-4[41A809], Kentucky[Kentucky's] Withholding Certificate [of Nonresidence], Revenue Form 42A804 [41A804], with his Kentucky employer to exempt his income from Kentucky withholding. All Kentucky residents are subject to Kentucky income tax requirements as set forth in KRS 141.020.

DANIEL P. BORK, Commissioner

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FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, November 13, 2018)

103 KAR 17:020. Combined individual returns.

RELATES TO: KRS 131.010[131.130], 141.010, 141.019, 141.050, 141.180, 141.900

STATUTORY AUTHORITY: KRS 131.130, 141.050[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation provides a basis for the combined individual income tax return which permits married taxpayers to gain the benefits of separate filing on one return.[The administrative regulation also covers other points related to individual income tax forms, including requirement for Social Security number.]

Section 1.[Forms. (1) Resident. A resident return shall be filed

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on Revenue Form 740 (long form) or 740-S (short form) except that a new resident may file on Revenue Form 740-NP (nonresidents and part-year residents).

(2) ~~Nonresidents.~~ A nonresident return shall be filed on Revenue Form 740-NP.

Section 2. ~~[Filing Elections. (1)]~~ Separate Return. Any individual, whether married or single, may elect to file a separate return. If both spouses have income, separate returns are required for married taxpayers that do not have the same residency status as a resident, nonresident, or part year resident.

Section 2. [defined in KRS 141.010.

(2) Joint Return. A taxpayer[husband] and spouse[wife] may elect, for any year, to file a joint return if they are married at the close of the taxable year; or a surviving spouse may elect to file a joint return if the deceased spouse[husband or wife] died during the taxable year even though one (1) spouse had no gross income. If a joint return is filed, the gross income and adjusted gross income of the taxpayer[husband] and spouse[wife] are computed in an aggregate amount and the deductions and the net income are also computed on an aggregate basis. If separate returns have been filed by both spouses for the taxable year, the taxpayers[husband and wife] may elect to file an amended joint return if the Department of Revenue[Cabinet] is notified in writing that the separate return election is rescinded. Likewise, if two (2) married taxpayers[husband and wife] have filed a joint return for the taxable year, they may elect to file an amended combined or amended separate returns. [A return marked "amended" will satisfy this requirement. Persons] Taxpayers filing joint returns are jointly and severally liable for all taxes, penalties, and interest accruing under the return.

Section 3. ~~[(3)]~~ Combined Return. Taxpayers[A husband and wife] may elect, for any year, to file a combined return if they are married at the close of the taxable year and have the same residency status as a resident, nonresident, or part year resident. [defined in Section 1.] If a combined return is filed, the gross income, adjusted gross income, deductions, net income, tax credits, and tax liabilities of the taxpayer[husband] and spouse[wife] are computed separately, but the tax shall be assessed on an aggregate basis. If married taxpayers[a husband and wife] elect to file a combined return, refunds shall be made payable to the taxpayers[husband and wife] jointly and the taxpayers[husband and wife] shall be jointly and severally liable for all taxes, penalties, and interest. Married couples electing to file a combined return shall not be permitted to rescind such election and file separate returns for that taxable year. [Section 3. General Provisions. (1) Forms may be obtained from the Revenue Cabinet, Frankfort, Kentucky 40601. Each taxpayer must carefully prepare his return so as to set forth fully and clearly the information required and attach copies of all withholding statements designated to be filed with the Kentucky income tax returns. Returns which are not so prepared will not be accepted as meeting the requirements of the law. In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return. If filed within the prescribed time, such statement will relieve the taxpayer from penalties for failure to file or late filing if the tentative return is promptly supplemented by a return made on the proper form.

(2) The Social Security number and complete home address of the taxpayer together with the official post office and zip code shall be given in the space provided at the top of the return for the name and address of the taxpayer. A taxpayer having a permanent business address may give that address as the principal or mailing address if the complete home address is also given within the space provided.

(3) The return may be made by an agent if the taxpayer is unable to do so. Whenever a return is made by an agent, it must be accompanied by a power of attorney, unless, by reason of absence, illness or other good cause, the taxpayer is unable to execute a power of attorney.]

DANIEL BORK, Commissioner

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FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(As Amended at ARRS, November 13, 2018)

103 KAR 17:060. Income subject to taxation; portions.

RELATES TO: KRS 141.010, 141.017, 141.019, 141.020, 141.900

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.020 establishes the income tax requirements for residents, part-year residents, and nonresidents. This administrative regulation prescribes methods of determining the Kentucky portion of certain income tax deductions of nonresidents and part-year residents.

Section 1. Definitions. (1) "Nonresident" is defined by KRS 141.010(18).

(2) "Part-year resident" is defined by KRS 141.010(20).

(3) "Resident" is defined by KRS 141.010(24). [Residents. The entire net income of a full-year resident individual shall be subject to Kentucky income tax regardless of its source. Income from out-of-state sources shall not be exempt. The adjustments to gross income and itemized deductions allowed under KRS 141.010(10) and (11) of a full-year resident shall not be limited to those paid in Kentucky.]

Section 2. Taxation of Residents. The entire net income of a resident[individual] shall be subject to Kentucky income tax regardless of its source. Income from out of state sources shall not be exempt. The adjustments to gross income and itemized deductions allowed under KRS 141.019 of a resident shall not be limited to those paid in Kentucky. [Persons Becoming Residents During the Year. (1) Persons who become Kentucky residents during the year shall be subject to Kentucky individual income tax upon their entire net incomes from any source after becoming Kentucky residents and upon their incomes from Kentucky sources prior to becoming Kentucky residents.

(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, persons who become residents during the year shall be limited to either:

(a) Adjustments to gross income and itemized deductions allowed pursuant to KRS 141.010(10) and (11) paid after becoming Kentucky residents; or

(b) That portion of total adjustments to gross income and itemized deductions that Kentucky income bears to total income.]

Section 3. Taxation of Part-Year Residents[Persons Becoming Nonresidents During the Year]. (1)[Persons who are Kentucky residents, but become nonresidents during the year.] Part-year residents shall be subject to Kentucky individual income tax upon their entire net incomes from all sources while they are Kentucky residents, and upon their incomes from Kentucky sources during the period of non-residency[after becoming nonresidents].

(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, part-year residents[persons who become nonresidents during the year] shall be limited to either.[:]

(a) Adjustments to gross income and itemized deductions allowed pursuant to KRS 141.019[141.010(10) and (11)] paid while a Kentucky resident; or

(b) That portion of total adjustments to gross income and total

itemized deductions allowed pursuant to KRS 141.019[141.010(10) and (14)] that Kentucky income bears to total income.

Section 4. Taxation of Nonresidents. (1) Any net income of a nonresident shall be subject to Kentucky income tax if it is derived from services performed in Kentucky[or] from property located in Kentucky, or from income received from a pass-through entity doing business in Kentucky. Income from sources outside Kentucky shall not be subject to Kentucky income tax. Losses incurred outside Kentucky shall not be deductible in computing Kentucky[shall not be] adjusted gross income.

(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, the adjustments to gross income and itemized deductions allowed pursuant to KRS 141.019[141.010(10) and (14)] shall be limited to that portion of adjustments to gross income and total itemized deductions that Kentucky income bears to total income.

Section 5. Allocation Based Upon Kentucky Income. If a deduction or an adjustment to gross income is allowable based upon the receipt of certain types of income and is limited to a maximum amount deductible for federal income tax purposes, the Kentucky income used to make the allocation shall be the same type of income used to allow the deduction on the federal return per KRS 141.017.

Section 6. Net Operating Loss Deduction. A[An individual] resident, [an individual][a] part-year[individual] resident, or [an individual] nonresident shall compute the net operating loss deduction using Kentucky income and expenses allowed or allowable on the Kentucky return.

DANIEL BORK, Commissioner

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**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, November 13, 2018)**

**103 KAR 18:050. Withholding statements.**

RELATES TO: KRS 131.250, 141.330, 141.335  
STATUTORY AUTHORITY: KRS 131.130, 131.250, 141.335  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue[Cabinet] to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 141.335(2) authorizes the department[requires the cabinet] to establish the form and required contents of the withholding statement to be filed pursuant to KRS 141.335(1). KRS 131.250 authorizes the department to establish requirements for electronic filing. This administrative regulation establishes those requirements.

**Section 1. Acceptable Forms and Information.**

(1) Employers shall provide to their employees[The cabinet shall accept] the following forms as withholding statements to report Kentucky withholding[, provided that the forms contain the required information listed in subsection (5) of this section]:

(a)[(1)] Revenue Form K-2, "Withholding Statement"; or

(2)] Federal Form W-2, "Wage and Tax Statement";[.]

(b)[(2)] Federal Form W-2G, "Certain Gambling Winnings;

(c)[(3)] Federal Form 1099 series; or

(d)[(4)] Facsimiles of the forms listed in this subsection[subsections (1), (2), or (3)] that are acceptable to the Internal Revenue Service.

(2) The[(5) Employee] statements provided by employers to their employees[listed in subsections (1) through (4)] shall

contain:

(a) The state name;

(b) The employer's Kentucky withholding account number;

(c) The Kentucky taxable wages; and

(d) The Kentucky tax withheld.

**Section 2. Termination of Business.**

(1) [General. Employers shall furnish to each employee, by January 31 following the close of the calendar year, the designated copies of the withholding statement if:

(1) Tax has been withheld from wages; or

(2) Tax would have been withheld if the employee had][claimed no more than one (1) withholding exemption or had] [not claimed exemption from withholding.]] Section 3. Contents.

(1) The withholding statement shall contain the following information:

(a) Employer's and employee's name and address;

(b) Employer's Kentucky withholding account number;

(c) Employee's Social Security number;

(d) Total wages paid to employee;

(e) Federal income tax withheld;

(f) Kentucky income tax withheld; and

(g) Federal employer's identification number (FEIN).

(2)(a) Withholding statements prepared incorrectly, illegibly, or on unacceptable forms shall be returned to the employer for reissuance.

(b) Commercially-printed forms shall:

1. Contain a designated space for state name, employer's Kentucky withholding account number, state wages, and state tax withheld; and

2. Conform substantially in content and size with the acceptable forms.] [Section 3.]4.][Interrupted and Terminated Employment. (1)(a) If employment ends before the close of the calendar year, the employer may furnish copies to the employee at any time after employment ends, but no later than January 31 of the following year.

(b) If an employee requests[asks for][the withholding statement, copies shall be provided to the employee within thirty (30) days of the request or within thirty (30) days of the final wage payment, whichever is later.

(2)(a)] If the employer terminates its business, the withholding statement shall be provided to its employees for the calendar year of termination within thirty (30) days of termination.

(2)[(b)] The employer shall submit its final return and withholding statements to the department[cabinet] within the same thirty (30) day period.

Section 3[4][5]. Incorrect and Duplicate Withholding Statements. (1) If it is necessary to correct a withholding statement after it has been issued to an employee, the Federal Form W-2C or a new withholding statement shall be clearly marked "Corrected[by Employer]", and a copy submitted to the department[cabinet] within thirty (30) days of issuance.

(2) If the withholding statement is lost or destroyed, the employer shall prepare and issue a duplicate copy to the employee that is clearly marked "Duplicate" within thirty (30) days of the request by the employee[, the employer shall prepare and issue duplicate copies to the employee that are clearly marked "Duplicate"].

Section 4[5][6]. Department[Cabinet] Copy. (1) Employers shall provide withholding statement information to the department in an acceptable format by January 31 following the close of the calendar year[Designated copies of withholding statements issued shall be submitted to the cabinet by each employer with Revenue Form 42A806, Transmitter Report for Filing Kentucky Wage Statement].

(2) An employer who issues twenty-six (26)[100] or more withholding statements annually shall utilize an acceptable form of electronic filing[magnetic-media filing].

(3) An employer who issues less than twenty-six (26)[100] withholding statements annually shall file either Form K-5, "Kentucky Employer's Report of Withholding Tax Statements," Revenue Form 42A805 with the department or utilize another acceptable form of electronic filing[may utilize magnetic media filing].



(4)(a) The ~~department~~~~[cabinet]~~ shall provide to employers by October 31 of each year information about the types of electronic filing methods~~[magnetic media that shall be]~~ acceptable to the ~~department~~~~[cabinet]~~.

(b) Acceptable electronic filing methods~~[magnetic media]~~ shall include all of the acceptable methods utilized by the Social Security Administration and the Internal Revenue Service that can be supported by the department's processes~~[cabinet's equipment]~~.

(c) Withholding statement information submitted~~[transmitted]~~ electronically to the department via a physical media device (e.g., CD, USB, external hard drive, etc.) shall be accompanied by Form 42A806 "Transmitter Report" upon submission.

(5) If an employer is required to utilize an electronic method ~~of [magnetic media]~~ filing, it shall file the withholding statements in an acceptable electronic format~~[on magnetic media]~~ unless the ~~department~~~~[cabinet]~~ grants a written waiver of the requirement.

Section ~~5[6]~~~~[7]~~. Penalties. (1) Failure to comply with the provisions of this administrative regulation may result in the issuance of penalties in accordance with KRS 131.180 unless reasonable cause is provided.

(2) Examples. One (1) or more of the penalties may apply if the employer:

(a) Fails to file timely;

(b) Fails to include all information required to be shown on the withholding statement;

(c) Includes incorrect or illegible information on the withholding statement and fails to file corrections;

(d) Files on paper if required to file electronically~~[on magnetic media]~~; or

(e) Fails to provide timely or correct payee statement to employees.

Section ~~6[7]~~~~[8]~~. The forms and materials prescribed herein may be inspected, copied, or obtained, subject to applicable copyright law, from 8:00 a.m. until 4:30 p.m. at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601[40620], at any Kentucky Department of Revenue Taxpayer Service Center during operating hours, and on the department's website at <http://revenue.ky.gov>.~~[Extension. Upon written application to the cabinet, the cabinet may grant employers an extension of time to furnish employees with the designated copy of the withholding statements. The cabinet shall not grant an extension that exceeds thirty (30) days.]~~

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

(a) Revenue Form K-2, "Withholding Statement", 2002; and

(b) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", September, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 10, 2018

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**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, November 13, 2018)**

**103 KAR 18:120. Security for compliance; bonds.**

RELATES TO: KRS 141.310

STATUTORY AUTHORITY: KRS 131.130, 141.310

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to enforce Kentucky's tax laws.** This administrative regulation implements KRS 141.310(14)[141.310(12)] which authorizes the Department of Revenue~~[department]~~ to require certain employers to post withholding performance bonds.

Section 1. Enforcement of Trusteeship. Additional means of enabling the Department of Revenue to collect withholding taxes has been provided in KRS 141.310(14)[141.310(12)] which authorizes the department to fix the amount of and demand the posting of a corporate surety bond or cash not to exceed \$50,000 by any employer required under KRS Chapter 141, or the administrative regulations promulgated thereunder, to withhold Kentucky income taxes from wages of employees.

Section 2. Bond Requirements. For purposes of KRS 141.310(14)[141.310(12)] a person from whom the department may~~[is authorized to]~~ require a withholding tax security bond and those persons from whom a security bond may be required includes~~[but is not limited to]~~ the following:

(1) An employer who is delinquent in either filing withholding tax returns required by law or is delinquent in submitting to the department any tax withheld from an employee, or both;~~[,]~~ or

(2) An employer, who~~[whom]~~ for any reason, the department determines is or may become an insecure risk for which there is a need to ensure~~[insure]~~ compliance with the law~~[, including every out-of-state employer during the employer's first year of operation in this state or any employer engaged under one (1) or more contracts the total of which is to be performed within one (1) year]~~.

Section 3. Bond Procedures. The department, after determining that a bond is necessary to ensure~~[insure]~~ compliance of reporting and paying withholding taxes, shall demand the posting of~~[such]~~ a security bond by written notice transmitted by certified mail and shall include therein instructions and forms for the convenience of the employer.

Section 4. Enforcement of Bond Requirement. ~~[(1)]~~ Failure to post the bond in the amount the department demanded from the employer within twenty (20) days from the date of the written notification by certified mail will, by such failure, authorize the department to invoke immediately~~[forthwith, and without further delay,]~~ its statutory authority to seek a court order requiring cessation of all business or activities of the~~[such an]~~ employer failing to post the bonds~~;~~ provided, that the employer may accompany the bond with, and simultaneously file with the department, a written protest or appeal from the department's demand for the bond; provided further, that any such protest or appeal shall be supported by a written memorandum advancing the employer's reasons and proposed justifications why such employer should be relieved from posting the bond or the objections to the amount of the bond.

(2) Within sixty (60) days after receipt of any bond posted under protest or appeal, the department shall furnish the employer by certified mail a final ruling or order and notice of any change as to, or in the amount of the bond that may be necessary to be made by the department in accordance with such final ruling or order in response to the protest or appeal].

Section 5. Change in Amount of Bond. The department may~~[has authority]~~ at any time~~[to]~~ increase or decrease the amount of any bond that has been posted.

Section 6. Monthly Returns and Payment. ~~[Notwithstanding the provisions of 103 KAR 18:040]~~ Any out-of-state or delinquent employer may be required to file monthly withholding tax returns and to accompany the~~[such]~~ monthly returns with a complete payment of all taxes withheld during the month covered by the return.

Section 7. Court Jurisdiction. The department may initiate

action seeking a court order, requiring cessation of all business operation or activity of any employer failing to comply with this administrative regulation, in the Franklin Circuit Court or in any other circuit court which may have jurisdiction over the area in which the employer resides, or in which some or all of the employer's business is conducted, or having jurisdiction of the area in which property of the employer is located. The department may institute ~~[any such]~~ legal action in accordance with any provision of this administrative regulation.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov).

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, November 13, 2018)**

**103 KAR 18:150. Employer's withholding reporting requirements.**

RELATES TO: KRS 131.155, 141.330~~[-1994 Ky. Acts ch. 4, sec. 4]~~

STATUTORY AUTHORITY: KRS 131.130, 131.155, 141.330~~[-1994 Ky. Acts ch. 4, sec. 4]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[Under authority of]~~ KRS 131.155(3)(c) requires the department to promulgate administrative regulations establishing electronic fund transfer payment requirements for the payment of taxes and fees administered by the department.~~[1994 Ky. Acts ch. 4, sec. 4,]~~ and KRS 141.330(1) authorizes the department to promulgate administrative regulations to require employers to remit the tax withheld under KRS 141.310 and 141.315 within a reasonable time after the payroll period or other period.~~[.]~~ This administrative regulation prescribes the reporting and payment requirements for employers withholding Kentucky income tax.

Section 1. Definitions. "Lookback~~[Look-back]~~ period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback~~[look-back]~~ period for calendar year 2018~~[1994]~~ is the period beginning on January 1, 2017~~[1993]~~ and ending on December 31, 2017~~[1993]~~.

Section 2. Reporting and Payment Requirements. Unless otherwise required or allowed by Section 3 of this administrative regulation:

(1)(a) Any employer who withheld income tax of less than \$400 during the lookback period shall report and pay the tax annually using Revenue Form K-3, "Employer's Annual Reconciliation Return."

(b) Revenue Form K-3 and the income tax withheld shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(2)(a) Any employer who withheld income tax of \$400 or more, but less than \$2,000 during the lookback period shall report and pay the tax quarterly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

(b) Revenue Form K-1 and the income tax withheld each quarter shall be filed and paid on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31).

(c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the fourth quarter shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(3)(a) Any employer who withheld income tax of \$2,000 or more, but less than \$50,000 during the lookback period shall report and pay the tax monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

(b) Revenue Form K-1 and the income tax withheld each month shall be filed and paid on or before the 15th day of the following month for each of the first eleven (11) months of the calendar year.

(c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the last month shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(4)(a) 1. Except as provided in paragraph (b) of this subsection, any employer who withheld income tax of \$50,000 or more during the lookback period shall report and pay the tax twice monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

2. Revenue Form K-1 and the income tax withheld during the first through the 15th day of each month of the calendar year shall be reported and paid on or before the 25th day of that month.

3. Revenue Form K-1 and the income tax withheld during the 16th through the last day of each month of the calendar year shall be reported and paid on or before the tenth day of the following month.

4. However, Revenue Form K-1 and the income tax withheld during the first calendar month shall be filed and paid on or before the tenth of the following month (February 10), and the income tax withheld for the period beginning December 16 and ending on December 31 shall be paid with Revenue Form K-3, "Employer's Annual Reconciliation Return," which shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(b) Any employer who withheld income tax during the lookback period of \$50,000 or more and whose average monthly income tax withheld during the lookback period is more than \$25,000 shall pay the tax withheld by electronic funds transfer~~[and shall report the tax withheld in accordance with Section 3(3) of this administrative regulation].~~

(5) The ~~department~~~~[cabinet]~~ shall provide written notification of the reporting and payment requirements to any employer who does not have a lookback period.

Section 3. Electronic Fund Transfers. (1) If, on any day during a reporting period, an employer accumulates \$100,000 or more of total income tax withheld before a current electronic transaction is otherwise due, the employer shall pay the tax withheld by electronic funds transfer. The employer shall electronically transfer the tax withheld as provided by 103 KAR 1:060 by the close of the first banking day after the first day the employer accumulates \$100,000 or more of income tax withheld~~[and shall report the tax withheld in accordance with subsection (3) of this section].~~

(2)(a) Any employer not required to pay the tax by electronic funds transfer may make a written request to the ~~department~~~~[cabinet]~~ and, if approved by the ~~department~~~~[cabinet]~~, shall be subject to the same requirements as those employers required to electronically transfer the tax.

(b) Any employer who may~~[permitted to]~~ pay by electronic funds transfer shall continue to pay the tax withheld by electronic funds transfer until the ~~department~~~~[cabinet]~~ authorizes the employer in writing to change his reporting and payment method.~~[(3) Any employer paying the tax withheld by electronic funds transfer shall do so in accordance with 103 KAR 1:060 and shall file a quarterly report with the cabinet using Revenue Form K-1-E, "Employer's EFT Return of Income Tax Withheld." Revenue Form K-1-E shall be filed with the cabinet on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31). Revenue Form K-3, "Employer's Annual Reconciliation Return," shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).]~~



Section 4. Authority to Change Reporting and Payment Requirements. Pursuant to the provisions of Section 2 of this administrative regulation:

(1) The ~~department~~[cabinet] may change annually the reporting or payment requirements of any employer upon written notice to the employer.

(2) Upon written request by any employer and approval by the ~~department~~[cabinet], the ~~department~~[cabinet] may change the reporting or payment frequency prescribed by this administrative regulation.

Section 5. Penalties and Interest. Any employer who fails to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183. ~~[Section 6. The provisions of this administrative regulation shall apply to any payroll period beginning after December 31, 1994.]~~

DANIEL BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov).

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, November 13, 2018)**

**301 KAR 3:100. Special commission permits.**

RELATES TO: KRS 150.170, 150.175, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue a special permit to an incorporated nonprofit wildlife conservation organization. KRS 150.195(1) requires[authorizes] the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.

Section 1. Definitions. (1) ~~["Proceeds" means the amount of money received by a wildlife conservation organization from the sale or transfer of a special permit minus expenses directly attributable to the sale of that permit.~~

(2) "Incorporated nonprofit wildlife conservation organization" means an entity that:

(a) Has a primary purpose, as expressed in its articles of incorporation or bylaws, to conserve and enhance fish and wildlife resources to provide opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities;

(b) 1. Holds status as a nonprofit organization pursuant to 26 U.S.C. Section 501(c)(3); and

2. Is incorporated under the laws of this state or any other state; or

(c) Holds a charter status under an incorporated parent organization.

(2) "Proceeds" means the amount of money received by an incorporated nonprofit wildlife conservation organization from the sale or transfer of a special commission permit minus expenses directly attributable to the sale of the permit.

(3) "Special commission permit" means a species-specific permit issued by the Kentucky Fish and Wildlife Commission to an incorporated nonprofit wildlife conservation organization that allows the permit recipient, depending on the species listed on the permit, to harvest:

(a) One (1) additional antlered or antlerless deer per license

year;

(b) One (1) additional turkey of either sex per license year;

(c) One (1) elk of either sex per license year; or

(d) Up to a daily bag limit of waterfowl per day.

Section 2. Issuance ~~and Sale~~[Sale, and Transfer] of Special ~~Commission~~ Permit. (1) There shall be no more than ten (10) special commission permits issued per species per year.

(2) An incorporated nonprofit wildlife conservation organization may apply for one (1) special commission permit per species. The incorporated nonprofit wildlife conservation organization shall accurately complete a Special Commission Permits Application Form.

(3) A national organization and its affiliated regional, state, and local chapters shall all be eligible to apply for a special commission permit in the same year if each organization meets the definition in Section 1(2) of this administrative regulation.

(4) A national organization and its affiliated regional, state, and local chapters shall not be eligible to be awarded more than one (1) special commission permit per species unless each applicant has a separate and distinct nonprofit organization status under 26 U.S.C. 501(c)(3) and a separate and distinct tax identification number.

(5) In addition to the completed application, the organization shall also submit:

(a) 1. One (1) copy of the organization's articles of incorporation or bylaws that state the purpose of the organization; or

2. A separate charter status from a parent organization and the parent organization's articles of incorporation or bylaws that state the purpose of the parent organization;

(b) Written proof of the organization's tax-exempt status including the applicant's tax identification number; and

(c) A letter from the organization's parent organization, if applicable, that states that the chapter organization is in good-standing and is recognized by the parent organization.

(6) The completed application and accompanying documents listed in subsection (5) of this section shall be delivered to the department by May 1 of each year.

(7) The items listed in paragraphs (a) through (e) of this subsection shall be grounds for disqualification from the award process:

(a) An incomplete application;

(b) Incomplete or missing accompanying documents, pursuant to subsection (5) of this section;

(c) Failure to submit the required application and accompanying documents to the department by the May 1 deadline;

(d) The wildlife conservation organization applicant did not use or transfer a special commission permit awarded in a previous year; or

(e) Failure to qualify as an incorporated nonprofit wildlife conservation organization.

(8) Prior to selecting special commission permit recipients, the Fish and Wildlife Commission shall review and consider all applications and documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (5) of this section.

(9) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

(a) Content and quality of submitted application materials;

(b) Past compliance;

(c) Ability to generate funds; and

(d) The proposed conservation project's potential for enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation in Kentucky.

(10) The Fish and Wildlife Commission shall select permit recipients based on the information listed in subsection (9) of this section.

(11) An incorporated nonprofit wildlife conservation organization that is awarded a special commission permit[recipient] shall:

(a) Use all proceeds from the sale~~or transfer~~ of the permit for

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conservation projects in Kentucky as approved by the Fish and Wildlife Commission;

(b) Underwrite all promotional and administrative costs for the selling[and transferring] of the permit;

(c) Sell[and transfer] each permit as stated in the application;

(d) Submit, by June first (1) of the year the permit is valid, to[Provide] the department[with] the[following] information listed in subparagraphs 1. through 4. of this paragraph on the[each] hunter[individual] who receives the[a transferred] permit from the nonprofit wildlife conservation organization.[:]

1. Name;

2. Address;[and]

3. Date of birth; and

4. A copy of the hunter's valid Kentucky Hunting license; and

(e) Submit, by May 1 of the following year, a report that includes:

1. A financial statement containing:

a. Total funds raised;

b. Overhead costs or expenses related to the sale of the permit; and

c. Net profit;

2. A summary of:

a. The conservation project; and

b. Expenditures related to the conservation project; and

3. A synopsis of the impact the conservation project had on enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation.

(12) Once a special commission permit has been issued to a hunter, it shall not be transferred to another hunter.

Section 3. Special Permit Use. (1) A special permit shall only be valid for the:

(a) Individual named on the permit;

(b) Species of wildlife listed on the permit; and

(c) The first season for that species in the calendar year following the quarterly commission meeting that the special permit was awarded, except for the special commission permit for deer and for waterfowl, which shall be valid for the first season following the quarterly commission meeting that the special permit was awarded.

(2) A special commission permit holder shall comply with all other department statutes and Title 301 KAR.

(3) A holder of a special commission permit to hunt deer may hunt on any Wildlife Management Area during an open deer season or nonmobility impaired quota hunt pursuant to 301 KAR 2:178, except:

(a) Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;

(b) A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and

(c) A permit holder shall notify the area manager upon leaving a Wildlife Management Area.

(4) A holder of a special commission permit to hunt wild turkey shall not hunt on a Wildlife Management Area that is closed to turkey hunting.

(5) A holder of a special commission permit to hunt waterfowl may hunt on Ballard, Boatwright, or Sloughs Wildlife Management Areas from one (1) of the areas' permanent waterfowl blinds by:

(a) Contacting the department no later than September 30; and

(b) Reserving a blind for one (1) of the available hunt periods established by the department, pursuant to 301 KAR 2:222.

(6) A holder of any special commission permit may hunt on private land with the permission of the landowner.

(7) Unless specific equipment is prohibited on a Wildlife Management Area, a special permit holder shall only harvest game with hunting equipment that is allowed for the season during which the permit holder is hunting.

Section 4. Incorporation by Reference. (1) "Special Commission Permits Application Form", 2015 edition, is incorporated by reference.

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

MISTY JUDY, Acting Deputy Commissioner

For FRANK JEMLEY III, Acting Commissioner

REGINA STIVERS

For DON PARKINSON, Secretary

APPROVED BY AGENCY: September 12, 2018

FILED WITH LRC: September 12, 2018 at 3 p.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov).

### GENERAL GOVERNMENT CABINET Department of Agriculture Office of Agricultural Marketing (As Amended at ARRS, November 13, 2018)

#### 302 KAR 50:080. Materials incorporated by reference.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: 260.850-260.869

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes material incorporated by reference for 302 KAR Chapter 50, except 302 KAR 50:050.

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

(a) "Grower License Application Packet", 2019[2018];

(b) "Field Planting Report", 2018;

(c) "Greenhouse/Indoor Planting Report", 2018;

(d) "Harvest/Destruction Report", 2018;

(e) "Grower Production Report Form", 2017;

(f) "Process/Handler Production Report and Annual License Renewal", 2017;

(g) "Site Modification Request Form", 2018;

(h) "Domestic Seed/Propagule Request Requirements", 2018;

(i) "International Seed Request Requirements", 2018;

(j) "Processor/Handler License Application Packet", 2019[2018]; and

(k) "University/College Affiliation Application Packet", 2019[2018].

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com](http://www.kyagr.com).

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: September 13, 2018

FILED WITH LRC: September 14, 2018 at 9 a.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Water**  
**(As Amended at IJC on Energy and Natural Resources,**  
**November 1, 2018)**

**COMILER'S NOTE: The only change made at the IJC meeting was in Section 3(2)(f): verification[certification]**

**401 KAR 5:006. Wastewater planning requirements for regional planning agencies.**

RELATES TO: KRS Chapters 67, 67A, 74, 76, 96, 108, 220, 224.10-100, 224.70-100, 224.70-110, 424, 33 U.S.C. 1251-1387

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110, 40 C.F.R. 130, 33 U.S.C. 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and 224.70-100 require[requires] the Energy and Environment Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. 33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for the control of water pollution. 33 U.S.C. 1288 requires the governor of the state or local officials to designate a boundary for areas within the state and a single representative organization within each area to develop a wastewater treatment management plan applicable to all wastewater generated within an area. 40 C.F.R. 130.6 requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas.

Section 1. Applicability. (1) A governmental entity, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, may apply for designation as a regional planning agency. An applicant for designation as a regional planning agency shall submit a regional facility plan to the cabinet.

(2) The cabinet shall designate a regional planning agency in accordance with 33 U.S.C. 1288(a)(2) and (3).

(3) The cabinet shall de-designate a regional planning agency if the regional planning agency:

(a) [The regional planning agency] Requests de-designation;

(b) [The regional planning agency] Fails to meet its planning obligations as specified in a grant agreement, contract, or memorandum of understanding; or

(c) [The regional planning agency] No longer has the resources or the commitment to continue water quality planning activities within the designated boundary.

(4) If a regional planning agency is de-designated, the cabinet shall assume responsibility for continued water quality planning and oversight of implementation of planning activities within the regional planning area.

(5) The cabinet shall not designate an entity as a regional planning agency if that entity does not have authority to meet the requirements established in 33 U.S.C. 1288(c)(2)(A) through (I).

Section 2. Requirement to Submit a Regional Facility Plan. (1) An applicant for designation as a new regional planning agency shall submit a regional facility plan to the cabinet.

(2) An existing regional planning agency shall submit a regional facility plan if:

(a) A new wastewater treatment facility is proposed for construction within the planning area;

(b) An existing regional planning agency proposes to expand the average daily design capacity of an existing wastewater treatment facility by more than thirty (30) percent; or

(c) The equivalent population served by an existing wastewater collection system or a system with a Kentucky Inter-System Operating Permit is proposed for expansion by more than thirty

(30) percent of the population served in the previously approved regional facility plan.

(3) A regional planning agency shall request a pre-planning meeting with the cabinet before submitting a regional facility plan.

(4) ~~One (1)[Two-(2)] paper copy[copies]~~ and one (1) electronic copy of the regional facility plan shall be submitted to the cabinet ~~and~~[One (1)-copy] shall be certified in a manner that meets the requirements established in 201 KAR 18:104.

Section 3. Contents of a Regional Facility Plan. (1) A regional facility plan shall include adequate information to allow for an environmental assessment of the projects proposed in the regional facility plan that are ready to begin construction within[the first] twenty-four (24) months of the cabinet's approval of the plan[planning period] and to assure that a cost-effective and environmentally sound means of achieving the established water quality goals can be implemented.

(2) A regional facility plan[shall be consistent with the Regional Facility Plan Guidance and] shall include:

(a) ~~An executive~~[A regional facility plan] summary of the findings presented in subsequent sections;

(b) A statement of the purpose of and need for the regional facility plan, including documentation of existing water quality or public health problems related to wastewater in the planning area;

(c) ~~A description of the:~~

1. Physical characteristics of the planning area;

~~2. [(d) A description of the]~~ Socioeconomic characteristics of the planning area;

~~3. [(e) A description of the]~~ Existing environment in the planning area;

~~4. [(f) A description of the]~~ Existing wastewater collection and treatment facilities in the planning area; and

5. Discharge permit conditions and compliance with those conditions;

~~(d) [(g)]~~ A forecast of flows and waste loads for the planning area;

~~(e) [(h)]~~ A detailed evaluation of each alternative, including which shall include:[alternatives, along with]

1. A twenty (20) year present worth cost analysis for each alternative, with sufficient detail to determine the most cost-effective alternatives;~~;~~

2. All wastewater management alternatives considered, including no action, and the basis for the engineering judgment for selection of the alternatives chosen for detailed evaluation~~;~~ shall be included;~~;~~

3. Sufficient detail~~shall be provided~~ to allow for a thorough cost analysis~~to be conducted~~;~~;~~

4. Nonmonetary effectiveness criteria shall include~~be limited to~~ implementability, environmental impact, constructability~~engineering evaluation~~, public support, decentralization, and regionalization;~~;~~

5. Intended sources of funding and estimated user fees; and;

6. How~~The~~ alternatives~~shall~~ reflect a comprehensive regional plan for the planning area and~~shall~~ minimize the number of point source discharges;~~;~~ Intended sources of funding shall be listed along with estimated user fees;

~~(f) [(i)]~~ Cross-cutter correspondence and mitigation, which shall include verification~~certification~~ from the regional planning agency of its commitment to all required mitigative action;

~~(g) [(j)]~~ An evaluation of the recommended regional facility plan; and

~~(h) [(k)]~~ Documentation of public participation.

1. A certified copy of the advertisement for the public hearing required by Section 5 of this administrative regulation, an attendance log or sign-in sheet, a copy of the minutes of the public hearing, and written comments and responses shall be submitted as part of the regional facility plan.

2. If more than one (1) public hearing is held or if there are public meetings or public notices about the project, a copy of all documentation of these events shall be submitted as part of the regional facility plan.~~[3. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.]~~

(3) The items required in subsection ~~2(c) through (f)~~<sup>(2)(f) through (h)</sup> of this section shall be prepared by, or under the direct supervision of, a professional engineer licensed in Kentucky.

Section 4. Requirement to Submit an Asset Inventory Report.

(1)~~(a)~~ An asset inventory report shall be submitted to the cabinet if:

~~1.(a)] It has been ten (10) years since the cabinet approved the last [regional planning agency submitted a] regional facility plan or asset inventory report; and~~

~~2.(b)] Section 2(2) of this administrative regulation does not require the regional planning agency to submit a regional facility plan.~~

~~(b1.(c)] A major facility shall submit the regional facility plan using the Water Resources Inventory System (WRIS).~~

~~2. A minor facility may submit the regional facility plan using WRIS or the Asset Inventory Report form.~~

(2) The regional planning agency shall submit~~the following information on the Asset Inventory Report Form~~:

- (a) Wastewater facility data;
- (b) Revenue and expenses;
- (c) Asset inventory;
- (d) Project prioritization;
- (e) Funding plan;
- (f) Copies of supporting documentation; and
- (g) Certification statement from a designated official.

(3) The cabinet shall issue to the regional planning agency an assessment report that provides recommendations related to facility planning, operation, and management that ensure continuing compliance and protection of surface water and groundwater.

(4) The cabinet shall provide public notice of its assessment of the Asset Inventory Report on its Web site for thirty (30) days.

(5) The public shall have an opportunity to comment on the cabinet's assessment of the asset inventory report and the period for comment shall remain open for thirty (30) days from the date of the first publication of the report.~~[(6)(a) If it has been ten (10) years or more since the approval of a regional planning agency's regional facility plan, the regional planning agency shall submit an asset inventory report to the cabinet by July 1, 2012.~~

~~(b) A subsequent asset inventory report shall be due to the cabinet ten (10) years from the approval date of the regional facility plan or asset inventory report, whichever is most recent.]~~

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to final agency action on the regional facility plan, the regional planning agency shall publish notice of its draft plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing shall be provided pursuant to KRS Chapter 424.

(2) A public notice issued pursuant to this administrative regulation shall contain~~the following information~~:

(a) The name and address of the regional planning agency that is proposing the plan;

(b) A brief description of the contents of the draft plan and the area to be served;

(c) The name, address, and telephone number of persons from whom interested persons may obtain further information and a copy of the draft regional facility plan;

(d) A brief description of the public's right to comment on the draft regional facility plan and the procedures for commenting;

(e) The date of previous public notices relating to the draft regional facility plan;

(f) The date, time, and place of the public hearing on the draft plan; and

g) A brief description of the nature and purpose of the hearing.

(3) The planning agency shall provide a copy of the public notice and the draft plan to the cabinet for publication on its Web site at least thirty (30) days prior to the public hearing.

(4) At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.

~~(5) [(4)]~~ The public shall have an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the

public hearing or until the termination of the hearing, whichever is later. The regional planning agency may extend the public comment period, on request, if it believes additional public input is necessary.

~~(6) [(5)]~~ A person may submit written or oral comments and data to the regional planning agency concerning the draft regional facility plan. In the interest of time and efficiency, limits may be set up on the time allowed for oral statements and the submission of statements in writing may be required.

~~(7) [(6)]~~ All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Regional Facility Plan Review. (1) The cabinet shall prepare an environmental assessment report summarizing the regional facility plan.

(a) The cabinet shall submit the environmental assessment report to the State Clearinghouse for review and comments to identify potentially adverse impacts resulting from the proposed projects~~that are ready to begin construction within the first twenty-four (24) months of the planning period~~.

(b) The cabinet shall provide public notice of the environmental assessment report on its Web site for thirty (30) days.

(c) The public shall have an opportunity to comment on the environmental assessment report, and the period of comment shall remain open for thirty (30) days from the date of the first publication of the report.

(d) The cabinet may identify measures in the environmental assessment report to avoid, minimize, or reduce potentially adverse environmental impacts.

(2) The cabinet shall issue a determination to approve or deny a regional facility plan within 120 calendar days of receipt of a complete regional facility plan.

(3) If the regional facility plan is submitted consistent with the requirements of this administrative regulation and addresses water quality or public health problems related to wastewater, the cabinet shall approve the regional facility plan.

(4) KPDES and facility construction permit decisions shall be made in accordance with approved regional facility plans, as established in 40 C.F.R. 130.12(a) and (b).

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

~~(a) "Regional Facility Plan Guidance", February 2011; and~~

~~(b) "Asset Inventory Report Form", DEP No. DOW0501 February 2011 is incorporated by reference.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained through the Division of Water's Web site at <http://water.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 15, 2018 at 9 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email [water@ky.gov](mailto:water@ky.gov).

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(As Amended at ARRS, November 13, 2018)**

**501 KAR 6:020. Corrections policies and procedures.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470,

# VOLUME 45, NUMBER 6 – DECEMBER 1, 2018

439.590, 439.640, 532.260

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 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.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures", November 13/October 12/July 19[April 12], 2018, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 4/12/18)
- 3.1 Code of Ethics (Amended 12/10/13)
- [3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)]**
- 3.9 Student Intern Placement Procedure (Amended 11/7/16)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 1/12/18)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
- 3.17 Uniformed Employee Dress Code (Amended 1/12/18)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Amended 11/13/18/10/12/18[Added 8/25/09])
- 5.1 Research, Surveys and Data Requests (Amended 3/14/18)
- 5.3 Program Evaluation and Measurement (Amended 6/9/15)
- 6.1 Open Records Law (Amended 5/14/07)
- 6.2 Inmate Record (Added 11/7/16)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
- 9.6 Contraband (Amended 2/26/16)
- 9.8 Search Policy (Amended 3/14/18)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 4/11/17)
- 10.3 Safekeepers and Contract Prisoners (Amended 1/12/18)
- 11.2 Dietary Procedures and Compliance (Amended 1/12/17)
- 11.4 Alternative Dietary Patterns (Amended 1/12/17)
- 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
- 13.2 Health Maintenance Services (Amended 2/26/16)
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Amended 6/14/16)
- 13.6 Sex Offender Treatment Program (Amended 11/7/16)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 Behavioral Health Services (Amended 11/7/16)
- 13.15 Inmate Observer Program (Added 8/12/16)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 1/12/17)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 Claims Commission (Amended 4/12/18)

- 14.6 Inmate Grievance Procedure (Amended 3/14/18)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 4/12/18)
- 14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18)
- 15.1 Hair, Grooming and ID Card Standards (Amended 1/12/18)
- 15.2 Rule Violations and Penalties (Amended 8/12/16)
- 15.3 Meritorious Good Time (Amended 11/13/18/10/12/18[11/7/16])
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
- 15.6 Adjustment Procedures and Programs (Amended 3/14/18)
- 15.7 Inmate Accounts (Amended 1/12/18)
- 15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 4/12/18)
- 16.1 Inmate Visits (Amended 4/11/17)
- 16.2 Inmate Correspondence (Amended 11/7/16)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16)
- 16.5 Video Visitation (Added 8/12/16)
- 17.1 Inmate Personal Property (Amended 3/14/18)
- 17.2 Assessment Center Operations (Amended 6/9/15)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16)
- 18.1 Classification of the Inmate (Amended 3/14/18)
- 18.2 Central Office Classification Committee (Amended 1/12/18)
- 18.3 Confinement of Youthful Offenders (Added 6/9/15)
- 18.5 Custody Level and Security (Amended 11/13/18/7/19/18[4/12/18])
- 18.7 Transfers (Amended 5/13/16)
- 18.9 Out-of-state Transfers (Amended 2/26/16)
- 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 4/12/18)
- 18.15 Protective Custody (Amended 1/12/18)
- 18.16 Information to the Parole Board (Amended 1/12/18)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Amended 2/26/16)
- 19.3 Inmate Wage/Time Credit Program (Amended 10/12/18[4/12/18])
- 19.4 Work Release for State Inmates in Jails (Added 4/12/18)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 3/14/18)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Inmate Furloughs (Added 4/12/18)
- 25.6 Community Service Center Program and Jail Placement (Amended 11/13/18/10/12/18[3/14/18])
- 25.10 Administrative Release of Inmates (Amended 8/12/16)
- 25.11 Victim Services Notification (Amended 8/25/09)
- 25.12 Home Incarceration Program (Added 8/12/16)
- 25.13 Women's Medical Release: Pregnancy (Added 11/13/18/10/12/18[7/19/18])
- 25.14 Reentry Center Program (Added 11/13/18/10/12/18)
- 26.1 Citizen Involvement and Volunteer Service Program (Amended 1/12/18)

(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. This material



may be obtained from the Department of Corrections website in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: September 28, 2018

FILED WITH LRC: October 12, 2018 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, November 13, 2018)**

**701 KAR 5:140. Districts of innovation.**

RELATES TO: KRS 156.108, 156.160(1)(g), 160.107

STATUTORY AUTHORITY: KRS 156.108, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(g) requires[gives] the Kentucky Board of Education [the authority] to promulgate administrative regulations and KRS 156.108 requires the Kentucky Board of Education to promulgate administrative regulations to prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation by the Kentucky Board of Education. This administrative regulation establishes the requirements and approval process for districts of innovation.

Section 1. Definitions. (1) "Competency based learning" means a framework for the awarding of credit to students upon mastery of Kentucky[Kentucky's Core] Academic Standards ~~established/set forth~~ in 704 KAR Chapter 3 and 8[in 704 KAR 3:303] or upon mastery of any additional competencies which shall also include explicit, measurable, transferable learning objectives that empower students and that include application and creation of knowledge along with the development of important skills and dispositions.

(2) "District of Innovation" is defined in KRS 156.108(1)(a) and does not include a district with an innovation plan that does not require the Kentucky Board of Education to approve an exemption from any administrative regulation or statute.

(3) "Eligible employees" is defined in KRS 160.107(3)(b).

(4) "Expanded learning opportunities" means initiatives that provide students additional opportunities for enrichment, personal growth, and engagement outside the traditional school day, and that may include extended day or year initiatives, before- and after-school programs, Saturday, weekend, and summer programs, distance learning, and early childhood education initiatives.

(5) "Innovation" is defined in KRS 156.108(1)(b).

(6) "Innovative strategies" means strategies that provide non-traditional approaches to all areas of curriculum, instruction, assessment, governance, and school operation.

(7) "School of Innovation" is defined in KRS 156.108(1)(c).

**Section 2. Conditions and Areas of Emphasis for Innovation.**

(1) Any public school district may submit an application for approval as a District of Innovation in accordance with the application process established in Section 3 of this administrative regulation. A district may submit a District of Innovation Application for a minimum of one (1) school within the district; however, an individual school shall not submit an application except as part of a district application.

(2) A district may incorporate in its application any innovative strategies and models that have been shown to be effective in other districts or states or new innovative strategies or models created by the district or school. Innovative strategies may include:

(a) Moving to a competency based learning system, including development of alternate methods for delivering curriculum or for measuring mastery of standards and skills;

(b) Creating multiple pathways to graduation, including

rigorous career and technical pathways, apprenticeships, early college high schools, early graduation options, or digital learning opportunities;

(c) Redefining[Rethinking] the times and places that learning occurs, including lengthening or flexing the school day or school year, moving learning beyond the traditional school building, or incorporating expanded learning opportunities;

(d) Implementing alternative forms of school governance that include the engagement of teachers, parents, and community members and that does not meet the requirements of KRS 160.345;

(e) Designing learning environments that include the student in the design of learning pathways; or

(f) Creating additional job classifications for certified or classified staff beyond the traditional roles of teacher and instructional assistants and compensating staff on schedules other than single salary schedules.

Section 3. Application Process. (1) A district may submit an original or renewal District of Innovation Application to the Kentucky Department of Education[department] at any time within the calendar year. Each implementation of an approved application shall begin at the start of a school term, and a district shall submit an application at least ninety (90) days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term[480 days from the date of submission of the application].

(2) A[Pursuant to KRS 160.107(3), a] district shall identify and include in its application:[those schools that have voluntarily chosen to be schools of innovation, any persistently low-achieving schools that the district chooses to make schools of innovation, and any district-operated schools per KRS 160.345(1)(b) the district plans to create in its application.]

(a) Any schools that have voluntarily chosen to be schools of innovation pursuant to KRS 160.107(3)(a);

(b) Any schools identified for Comprehensive Support and Improvement pursuant to KRS 160.346 that a local board of education has chosen, pursuant to KRS 160.107(3)(c), to make schools of innovation; and

(c) Any district-operated schools that a district plans to create through the application.

(3) The department shall provide technical assistance to districts prior to application submission.

(4) In addition to the application requirements established in KRS 160.107(1), the application shall include the following components:

(a) An individual school level plan for each existing school included in the district's innovation plan and for any district-operated school the district plans to create through[under] the application;

(b)[A description of how the district's innovation will provide greater improvement in student outcomes, particularly among low-achieving students, than the outcomes the district would expect using its existing instructional programs. The plan shall specifically address how it more effectively improves the multiple measures required under the accountability system, including targets for student achievement, student growth, achievement gap reduction, graduation rate, and college and career readiness;

(c) A description of the district's plan to ensure that capacity exists in both human and fiscal resources to implement the changes needed in the district to ensure a successful implementation of the district's innovation plan;

(d) Where the application proposes alternative education programs and services and in order to comply with the innovation plan requirements in KRS 160.107(2)(b), a description of the district's attendance policy for non-traditional settings and the district's plan to ensure that all students meet attendance requirements as required pursuant to KRS 158.030 and KRS 158.100;

(c)[(e) A plan for developing alternate assessment options and measuring student performance outcomes in non-traditional settings including extended learning opportunities, apprenticeships, private instruction, work-study, study in a foreign country, awarding



of competency based learning credit, community service, independent study, or on-line learning opportunities;

(f) A description and rationale for the innovative strategies and models chosen to be implemented;

(d) A description of expected gains in student learning as a result of implementing these strategies, including a description of how improved student learning will be measured and reported;

(e)(g) A complete list of the statutes, administrative regulations, and local board policies, except as provided in KRS 160.107(2), from which the local district is seeking a waiver or exemption in order to implement innovative strategies and an explanation detailing of:

1. How the requirements of those authorities are a barrier to implementing innovative strategies[that implementation]; and

2. How a waiver or exemption, if granted by the Kentucky Board of Education, will ease or remove barriers to implementation.

(f)(h) Documentation of [broad] support for the proposed innovations as required by KRS 160.107(1)(d). [including educators, parents, local institutions of higher education, and business and community partners.] This documentation may[shall] include:

1. Minutes of local board of education meetings at which the District of Innovation Application was discussed;

2. Transcripts or minutes from stakeholder meetings designed specifically to develop or support the District of Innovation Application;

3. Minutes of school-based decision making council meetings at which the District of Innovation Application was discussed; or (SBDM) councils that include information showing an affirmative vote of at least seventy (70) percent of the eligible employees to participate in the application as well as discussion of the application itself. The vote of the eligible employees shall be conducted based on school council policy related to council elections per KRS 160.345;]

4. Letters of support and commitment to adhere to the innovation plan from a variety of local stakeholder groups including parent, community, and business groups.]; and

5. If the application contains a request for waiver of sections of KRS 160.345, evidence of the two (2) votes required by KRS 160.107(4)(b) for each school requesting the waiver, specifying the vote from the school-based decision making council and the vote from the teachers and staff in the school.];

(g) For each school included in the District of Innovation Application, evidence showing at least seventy (70) percent of eligible employees cast an affirmative vote to request inclusion as required by KRS 160.107(3);

(h) For each school included in the District of Innovation Application that is requesting a waiver of the school council structure established[outlined] in KRS 160.345:

1. Evidence showing the school-based decision making council voted and at least seventy (70) percent of eligible employees voted to approve the waiver request as required by KRS 160.107(4)(b); and

2. A description of the governance model to be used in the affected school to ensure teachers, parents, and staff continue to share leadership responsibilities as required by KRS 160.107(4)(d).

(i) A detailed budget indicating how the local board of education shall support implementation of the innovation plan over the course of the initial five (5) year innovation period;

(j) Signatures of the superintendent and board chair along with official board minutes documenting the vote to approve submission of the application; and

(k) Signature of the chair of the SBDM council for each school participating in the application;

(l) A description of how the district shall support job-embedded professional learning.]; and

(m) For each school in the plan that is requesting a waiver of the school council structure outlined in KRS 160.345, a description of the governance model to be used in the school. The new governance model shall ensure that teachers, parents, and staff continue to share leadership responsibilities as outlined in KRS

160.107(4)(d).]

(5)(a) A committee designated by the Commissioner of Education[commissioner] shall review and recommend approval or denial of a completed application to the Kentucky Board of Education within forty-five (45)[sixty (60)] days from receipt of the completed application based on use of the District of Innovation Application Scoring Rubric. [(b) An incomplete or denied application shall be returned to the district and, if re-submitted, the committee shall review and recommend approval or denial to the Kentucky Board of Education within sixty (60) days of receipt of the re-submitted application.]

(6)(a) The Kentucky Board of Education shall make the final decision on approval or denial of the application at its first regularly scheduled meeting following the committee's review of the application and recommendations based on the District of Innovation Application Scoring Rubric.

(b) A successful application shall be given an initial approval for five (5) years.

(7) At the end of the term of approval, a District of Innovation with an active application may submit a renewal application using the same application process established for initial applications in this section. Each renewal of a District of Innovation shall not exceed five (5) years. [(c) A district that is approved and whose application is still active after five (5) years may submit a renewal application using the application process established in this administrative regulation. Each renewal of a district of innovation shall not exceed five (5) years.]

(8)(7)(a) A [district approved as a] District of Innovation may amend its plan as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain the following:

1. The description of the amendment, a proposed timeline for implementation, and a justification for the request;

2. How the proposed amendment improves the application; [s opportunities to be successful; and]

3. Evidence[All appropriate evidence] that the amendment [affecting an individual school of innovation] was supported in a manner similar to that established in Section 3, subsection (4)(f)(h) of this section] of this administrative regulation; and[.];

4. Evidence that an amendment affecting an individual School of Innovation complies with subsection (4)(g) and (h), if applicable, of this section.

(c) The amended plan shall be referred to a [the] committee designated pursuant to subsection (5) of this section[of this administrative regulation]. The committee shall review and recommend approval or denial of an [the] amendment request to the Kentucky Board of Education[and make a determination for approval] within forty-five (45)[sixty (60)] days from receipt of the amendment submission based on use of the District of Innovation Application Scoring Rubric.

(d) The Kentucky Board of Education shall make the final decision on approval or denial of the amended plan at its first regularly scheduled meeting following the committee's review of the amendment request and recommendations based on the District of Innovation Application Scoring Rubric.

(e) An amended plan approved by the Kentucky Board of Education shall be in effect for the remainder of the period of approval granted pursuant to subsection (6) or (7) of this section.

Section 4. Monitoring of Plan Implementation. (1) District and school innovation plans shall:

(a) Be incorporated within the overall district and school comprehensive improvement plans[plan]; or

(b) Replace the district and school comprehensive improvement plans[plan].

(2) At the completion of the second year after plan approval and each year thereafter for the term of the approval status, [a district approved as] a District of Innovation shall annually provide an implementation report[data] to the department[commissioner] that shall include the following data:

(a) Number of students served by the innovation plan, including the total number and the total number disaggregated by socio-economic status, race or ethnicity, gender, disability, and

grade level;

(b) Number of students served by the innovation plan that are not on track to graduate from high school, including the total number and the total number disaggregated by socio-economic status, race or ethnicity, gender, disability, and grade level;

(c) Documentation of student performance measures, including proficiency, growth, and transition readiness; and progress toward graduation and college and career readiness;

(d) Total number of certified teachers participating in the innovation plan and their roles and responsibilities;

(e) Documentation of certified and classified staff operating in a non-traditional school environment;

(f) Documentation of any extended learning opportunities in which students in the school of innovation participate for the purposes of earning or recovering credit, including qualifications of instructors, time spent, and student outcomes; and

(g) (d) Other measurable outcomes specific to the district's innovation plan as described in the initial application or through modification of the original plan. [(3) At the end of the second year after plan approval and each year thereafter for the term of the approval status, a district approved as a District of Innovation shall receive an annual site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor progress and interview staff and students to collect qualitative data on the effect of the innovation plan and for future research needs.]

Section 5. Probation, Revocation, and Appeal Procedures. (1) After its annual review of a district's implementation report [and the report of the site visit team], the Kentucky Board of Education may[, on the anniversary of the application approval,] determine that a district's status as a District of Innovation shall be placed on probation or revoked. [district shall be placed on probation and shall provide the district with a corrective action plan.]

(2) A District of Innovation placed on probation shall be provided with a corrective action plan and, upon the subsequent year's review of the implementation report, [reports, if] the Kentucky Board of Education [does not believe the district has met the expectations of the corrective action plan, it] may revoke a district's approval as a District of Innovation if it does not believe the district has met the expectations of the corrective action plan.

(3) Prior to having its status as a District of Innovation placed on probation or revoked, a district shall receive a site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor the district's progress in implementing the innovation plan, collect qualitative data on the effectiveness of the innovation plan, and verify the district's compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through:

(a) Direct observation;

(b) Interviews with staff and students; or

(c) Examination of records.

(4) [(3)] Upon notification of probation or revocation of District of Innovation status, the Kentucky Board of Education shall give the district thirty (30) days to appeal the decision in writing and shall rule on the appeal at its next regularly scheduled meeting following the submission of the appeal.

(5) [(4)] Any district that has had its status as a District of Innovation revoked shall wait a minimum of one (1) calendar year before re-applying to be a District of Innovation.

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

(a) "District of Innovation Application", August 2018 ~~March 2013~~; and

(b) "District of Innovation Application Scoring Rubric", August 2018 ~~March 2013~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [This material may be inspected,

copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Innovation and Partner Engagement, 1st floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Jr., Ph.D., Interim Commissioner of Education  
HAL HEINER, Chairperson

APPROVED BY AGENCY: August 15, 2018

FILED WITH LRC: August 15, 2018 at 10 a.m.

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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department of Workforce Investment**  
**Office of Employment and Training**  
**(As Amended at ARRS, November 13, 2018)**

**787 KAR 1:010. Application for employer account; reports.**

RELATES TO: KRS 341.070, 341.190, 341.243, 341.250, 341.262

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations for the proper administration of KRS Chapter 341. KRS 341.190(2) [(1)] requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the division.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall complete and file with the Division of Unemployment Insurance an Application for Unemployment Insurance Employer Reserve Account UI-1 no later than the last day of the calendar quarter in which the coverage requirements are first met.

Section 2. Each employing unit shall complete and file with the Division of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;

(2) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;

(3) UI-3.2, Account Status Information;

(4) UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or Part;

(5) UI-35, Termination of Coverage;

(6) UI-74, Application for Partial Payment Agreement;

(7) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits; and

(8) UI-203, Overpayment and Fraud Detection.

Section 3. If an employing unit elects to submit the information required in any report listed in Section 1 or 2 of this administrative regulation through the Web site provided by the Division of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

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

(a) UI-1, "Application for Unemployment Insurance Employer

Reserve Account", Rev. 3/05;

(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 5/11;

(c) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 7/18[4/13];

(d) UI-3.2, "Account Status Information", Rev. 7/18[5/11];

(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 3/05;

(f) UI-35, "Termination of Coverage", Rev. 5/11;

(g) UI-74, "Application for Partial Payment Agreement", Rev. 5/11;

(h) UI-203, "Overpayment and Fraud Detection", Rev. 9/11; and

(i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", Rev. 9/11[1].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, 275 E. Main Street, 2E, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DERRICK RAMSEY, Secretary

APPROVED BY AGENCY: September 13, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

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**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**General Section**  
**(As Amended at ARRS, November 13, 2018)**

**815 KAR 2:010. Continuing education requirements.**

RELATES TO: KRS 198B.090, 198B.095, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025, 198B.6405, 198B.6409, 198B.654, 198B.658, 198B.660, 198B.664, 198B.672, 227.570, 227.590, 227A.040, 227A.100, 318.054, 318.130

STATUTORY AUTHORITY: KRS 198B.090(1)(a), 198B.095(1), 198B.4009(3), 198B.4023(7), (9), 198B.4025, 198B.6405(4), 198B.6409, 198B.654(1), 198B.684, 227.570(4), 227.590(1), 227A.040(8), 227A.100(7), 318.054, 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the department to create and administer a certification program for building inspectors. KRS 198B.095(1) authorizes the department to promulgate administrative regulations to create a building inspectors training program. KRS 198B.4023 and 198B.4025 require the department to promulgate administrative regulations establishing continuing education requirements for elevator contractors and elevator mechanics. KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.684 authorizes the department to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders of heating, ventilation, and air conditioning (HVAC). KRS 198B.6409 requires the commissioner to promulgate administrative regulations to establish the procedures necessary to implement KRS 198B.6401 through 198B.6417. KRS 198B.6405(4) establishes the continuing education requirements for fire sprinkler inspectors. KRS 227.590(1) requires the department to make and enforce administrative regulations to implement KRS 227.550 through 227.660. KRS ~~227.570(3)~~~~[227.570(4)]~~ requires the department to establish the standards for the certified installer seal program. KRS 227A.040(8) authorizes the department to promulgate administrative regulations to establish procedures governing the licensure of electricians and electrical contractors. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education. KRS 318.130 requires the department to promulgate a Kentucky State Plumbing Code. KRS 318.054

requires the department to promulgate administrative regulations establishing the requirements for continuing education requirements for plumbers. This administrative regulation establishes the requirements for continuing education for certified building inspectors, trainee building inspectors, elevator contractors, elevator mechanics, fire sprinkler inspectors, master HVAC contractors, journeyman HVAC mechanics, certified installers of manufactured homes, master electricians, electricians, electrical contractors, electrical inspectors, master plumbers, and journeyman plumbers.

Section 1. General Requirements. (1) Prior to license renewal or certification renewal, a licensee or certificate holder shall submit proof of continuing education to the department.

(2) Except as established in subsection (3) of this section, a licensee or certificate holder shall obtain the required number of hours of continuing education pursuant to Section 2 of this administrative regulation during the twelve (12) months prior to renewal of the license or certificate.

(3)(a) A licensee or certificate holder who accumulates more than the required annual number of continuing education hours may carry forward the excess credit hours into the two (2) successive educational years.

(b) Carried forward credit hours shall be limited to a total of twelve (12) hours. All excess credit hours above the total of twelve (12) hours shall not be carried forward.

(4) The required annual number of continuing education hours shall not be required for a licensee's first renewal if the initial license was issued within twelve (12) months of renewal.

(5) More than two (2) hours of safety practices and procedures per twelve (12) month period shall not be accepted towards the required annual number of continuing education hours.

(6) Out-of-state courses and trainings.

(a) Upon written request by a licensee or certificate holder, the department may recognize continuing education credit for courses or trainings held in another state if the material covered is relevant to the particular license.

(b) The licensee, certificate holder, or course provider shall submit with the request:

1. Course materials, including for example, handouts, course outlines, or a syllabus provided before or during the out-of-state course or training;

2. A certificate of completion of the out-of-state course or training, if applicable; and

3. The results of any quizzes or tests taken in association with the out-of-state course or training.

(7)(a) Except as established in paragraph (b) of this subsection, an individual who holds two (2) different licenses within one (1) division or one (1) section of the department shall comply with the required annual number or continuing education hours established in Section 2 for one (1) license.

(b) An electrical contractor shall not be able to apply a master electrician, electrician, or electrical inspector's hours toward the electrical contractor's continuing education.

(8) One (1) hour of class shall be equivalent to fifty (50) minutes of classroom instruction or approved online courses as established in 815 KAR 2:020.

(9)(a) A licensee who creates, teaches, instructs, or participates on a panel in an approved continuing education course as established in 815 KAR 2:020 shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

(b)1. A licensee who creates, teaches, instructs, or participates on a panel shall only receive credit for the initial creation, teaching, or participation on a panel for a continuing education course.

2. A licensee who creates, teaches, instructs, or participates on a panel shall not receive credit for any subsequent involvement with the same continuing education course.

(10) A licensee that is a corporation, business, or partnership shall designate an authorized agent to complete the licensee's annual continuing education requirements for purposes of license renewal.

(11) Inactive license.

(a) An inactive licensee or inactive certification holder shall not

be required to attend or submit proof of annual continuing education.

(b) Prior to reactivation of a license or a certificate, the licensee, certificate holder, or course provider shall provide proof that the licensee or certificate holder has completed the required annual number of continuing education hours for the particular license or certificate in the twelve (12) months preceding reactivation.

Section 2. Division and Section-specific Requirements. (1) Except as established in subsection (2) of this section, a licensee or certificate holder shall provide proof of at least six (6) hours of approved continuing education prior to license renewal.

(2) The licensee or certificate holders shall comply with the requirements established in paragraphs (a) through (e) of this subsection:

(a) Each certified building inspector and trainee building inspector shall provide proof of at least twelve (12) hours of continuing education.

(b) Each certified installer shall provide proof of at least five (5) hours of continuing education prior to license renewal.

(c) Each electrical inspector shall provide proof of at least twelve (12) hours of continuing education prior to certification renewal.

(d) Each elevator contractor, elevator mechanic, and accessibility and residential elevator mechanic shall provide proof of at least eight (8) hours of continuing education prior to license renewal.

(e) Each fire sprinkler inspector may submit proof of a NICET certification in the testing of water-based systems to the department instead of completing the required annual number of continuing education hours.

(3) Building inspectors. Each certified building inspector's and trainee building inspector's continuing education course shall relate to general business and technical skills required of a certified inspector.

(4) Elevators. Each elevator contractor's, elevator mechanic's, and accessibility and residential elevator mechanic's continuing education course shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) Kentucky codes related to elevators; or
- (d) Subject matter directly related to the elevator trade.

(5) Heating, Ventilation, and Air Conditioning. Each master HVAC licensee's and journeyman HVAC licensee's continuing education course shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) Codes relating to HVAC; or
- (d) Subject matter directly relating to the HVAC trade.

(6) Plumbing. Each master plumber's and journeyman plumber's continuing education courses shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) The Kentucky State Plumbing Code; or
- (d) Subject matter directly related to the plumbing trade.

(7) Electrical.

(a) Each master electrician's, electrician's, and electrical inspector's continuing education course shall relate to one (1) or more of the following:

- 1. Job safety;
- 2. Codes related to the electrical industry; or
- 3. Subject matter directly related to the electrical trade.

(b) Each electrical contractor's continuing education course shall relate to one (1) or more of the following:

- 1. Business; or
- 2. Job safety.

(8) Fire sprinkler inspectors. Each fire sprinkler inspector's continuing education course shall relate to one (1) or more of the following:

- (a) NFPA 25;
- (b) Kentucky Building Code Section 900; or

(c) Job safety.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

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**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**General Section**  
**(As Amended at ARRS, November 13, 2018)**

**815 KAR 2:020. Continuing education course and provider approval.**

RELATES TO: KRS 198B.090, 198B.095, 198B.4009, 198B.4023, 198B.4025, 198B.6504, 198B. 6409, 198B.654, 198B.664, 198B.684, 227.570, 227.590, 227A.040, 227A.100, 318.054, 318.130

STATUTORY AUTHORITY: KRS 198B.090(1)(a), 198B.095(1), 198B.4009(3), 198B.4025(3), 198B.6409(5), 198B.654(1), 198B.684, 227.570(4), 227.590(1), 227A.040(8), 227A.100(7), 318.054, 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the department to create and administer a certification program for building inspectors. KRS 198B.095(1) authorizes the department to promulgate administrative regulations to create a building inspectors training program. KRS 198B.4009(3) authorizes the department to promulgate administrative regulations necessary to implement the provisions of KRS 198B.400 through 198B.540. KRS 198B.4025(3) authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing education programs. KRS 198B.6409 requires the department to promulgate an administrative regulation to establish requirements for approval of continuing education programs and continuing education courses for certified fire sprinkler inspectors. KRS 198B.654(1) requires the department to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.684 authorizes the department to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers. KRS 227.590(1) requires the department to make and enforce administrative regulations to implement KRS 227.550 through 227.660. KRS 227.570(3)[227.570(4)] requires the department to establish the standards for the certified installer seal program. KRS 227A.040(8) authorizes the department to promulgate administrative regulations to establish procedures to govern the licensure of electricians and electrical contractors. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education, including program content and qualifications of providers. KRS 318.054 authorizes the department to adopt continuing education requirements for plumbers. This administrative regulation establishes the requirements for approval of continuing education courses and providers.

Section 1. Requirements for Continuing Education Provider Approval. (1) A continuing education course provider shall be registered with the department.

(2) A course provider may be one of the following:

(a) Any individual, company, or organization approved by the department;

(b) A course provider of elevator continuing education may be an organization listed in KRS 198B.4025(3); or

(c) A course provider of electrical continuing education may be an organization listed in KRS 227A.100(7).

(3) Application.

(a) Each continuing education course provider shall apply to

the department by submitting a completed Form HBC CE-1, Application for Course Provider Approval.

(b) A course provider that intends to offer courses covering material applicable to more than one of building inspectors, elevators, fire sprinklers, HVAC, certified installers, electrical, or plumbing shall submit one application to register with the department.

(4) The department shall maintain a list of current approved continuing education providers.

(5) A course provider shall report to the department any change in the registration information within ten (10) days of the change taking effect.

(6) Course provider registration shall be valid for two (2) years from the date of issuance.

(7) Renewal.

(a) A course provider shall renew its registration with the department prior to expiration of the course provider registration.

(b) A course provider shall submit an updated Form HBC CE-1 to the department for renewal.

(8) Inactive course provider.

(a) If a course provider does not hold at least one (1) class annually, then the course provider's approval shall be marked as inactive by the department.

(b) A course provider whose approval is inactive shall reapply to the department by submitting a completed Form HBC CE-1 before offering a course.

(9) Revocation. The department may revoke a course provider's approval if the department determines that the course provider:

(a) Obtains, or attempts to obtain, registration of course approval through fraud, false statements, or misrepresentation;

(b) Does not provide complete and accurate information either in the initial registration or in notification of changes to information;

(c) Advertises a continuing education course as being approved by the department prior to receiving approval;

(d) Engages in fraudulent or deceptive business practices; or

(e) Fails to comply with the requirements of this administrative regulation.

(10) A course provider may request a hearing pursuant to KRS Chapter 13B to challenge a denial or a revocation of the course provider's registration.

Section 2. Requirements for Continuing Education Course Approval. (1) Each continuing education course shall be approved by the department.

(2) Only an approved course provider registered with the department shall provide continuing education courses.

(3) Application. Each course provider shall submit a completed Form HBC CE-2, Application for Continuing Education Course Approval at least thirty (30) business days prior to the proposed new course's first class date.

(4) Course information changes.

(a) A course provider shall submit any change in course information within ten (10) days of the intended change taking effect.

(b) All course information changes shall be approved by the department before the changes may take effect.

(c) If a course change affects a class that is already scheduled, the course provider shall notify all licensees or certificate holders that have registered for the class.

(5) Class schedule. A course provider shall submit a class schedule for an approved course at least ten (10) days before the class date. The class schedule shall include the following:

(a) Times and dates that classes will be offered;

(b) The location where classes will be offered; and

(c) Availability of the class to the public.

Section 3. Online Continuing Education. (1) Online continuing education courses shall:

(a) Be provided by a continuing education provider registered with the department;

(b) Except as established in subparagraph 3. of this subsection, include personal security questions, consisting of:

1. One (1) random security question at each log-in; and

2. Remaining security questions at intervals not to exceed twenty (20) minutes.

3. Online continuing education programs with alternative assurances of user involvement shall not comply with interval security questions.

(c) Allow course participants access to the course for a minimum of thirty (30) days following receipt of payment for the course;

(d) Make the course certificate of completion available online for twelve (12) months to any licensee who completes an online course;

(e) Retain a record of all course applications and completions for a minimum of three (3) years; and

(f) Be capable of storing course content questions as follows:

1. Stored content questions shall equal 150 percent of the content questions required; and

2. Duplicate questions shall not be permitted.

(2) A minimum of four (4) content questions, chosen randomly from stored content questions, shall be answered during each twenty (20) minutes of continuing education programming.

(3) Notification of correct and incorrect answers prior to completion of the online course and issuance of a certificate of completion shall not be permitted.

Section 4. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain the following records for each approved course for three (3) years:

(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 individual participant's information:

1. Name;

2. License number or numbers;

3. Date of attendance; and

4. Course, or courses, completed.

(c) The course provider shall submit a certificate of completion:

1. Electronically to the department; or

2. By hard copy provided to the licensee or certificate holder.

Section 5. Reschedule and Cancellations. (1) If a course provider cancels a course, the course provider shall notify the department and persons registered for the course at least five (5) business days prior to the cancellation, unless conditions exist that would preclude a five (5) business day notification of cancellation.

Section 6. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) business days of the requesting date.

(2) Representatives of the department may attend an approved continuing education course at no charge to ensure that the course meets the stated objectives provided by the course provider and that the course complies with this administrative regulation.

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

(a) "Form HBC CE-1, Application for Course Provider Approval," August 2018; and

(b) "Form HBC CE-2, Application for Continuing Education Course Approval," August 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner



K. GAIL RUSSELL, Acting Secretary  
 APPROVED BY AGENCY: August 13, 2018  
 FILED WITH LRC: August 14, 2018 at 9 a.m.  
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**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(As Amended at ARRS, November 13, 2018)**

**815 KAR 4:030. Elevator~~contractor~~ licensing**  
**~~requirements~~.**

RELATES TO: KRS 198B.4003, 198B.4009, 198B.4011, 198B.4013, 198B.4023, 198B.4025, 198B.4027, 198B.4033

STATUTORY AUTHORITY: KRS 198B.4009, 198B.4011, 198B.4013, 198B.4023~~, 198B.4025~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.4009(3) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations necessary to implement KRS 198B.400 through~~to~~ 198B.540. KRS 198B.4009(1) requires elevator contractors and elevator mechanics to be licensed.~~, and~~ KRS 198B.4011 provides the eligibility requirements ~~to be met~~ for issuance of an elevator contractor's license. KRS 198B.4013 provides the eligibility requirements for issuance of an elevator mechanic's license and an accessibility and residential elevator mechanic's license. KRS 198B.4023 authorizes the department to promulgate administrative regulations establishing the requirements for inactive license and reactivation procedures. KRS 198B.4025 establishes the continuing education requirements for elevator ~~license~~licensee renewals. KRS 198B.4027 provides the minimum insurance requirements for elevator contractor licensees. ~~[KRS 198B.4009(3) authorizes fees for the elevator licensure program to implement KRS 198B.400 through 198B.540.]~~ This administrative regulation establishes the licensure requirements for elevator contractors, elevator mechanics, and accessibility and residential elevator mechanics.

Section 1. General Requirements.

(1) Elevator contractor.

(a) Supervision. The elevator contractor shall provide general supervision~~supervise generally~~, and be primarily responsible for, all elevator work performed by the mechanics, employees, and subcontractors of the licensee.

(b)~~[(2)]~~ Change of licensee's information~~[Company license]~~. A licensee who is an employee of a company and whose license represents the company shall notify the department, in writing, if the licensee ceases to represent the company or if the name of the company changes~~, requesting a change of information on that license and paying the change of information fee established in Section 6(5) of this administrative regulation]~~.

(2) Elevator mechanic.

(a) Supervision. The elevator mechanic shall provide general supervision for all helpers or apprentices assigned to the elevator mechanic in carrying out the installation, construction, alteration, replacement, maintenance, removal, or dismantling of any elevator or fixed guideway system.

(b) Limitation on applicability. A licensed elevator mechanic may perform work on accessibility and residential elevators without obtaining an accessibility and residential elevator license.

(3) Accessibility and residential elevator mechanic.

(a) Supervision. The accessibility and residential elevator mechanic shall provide general supervision for all helpers or apprentices assigned to the accessibility and residential elevator mechanic in carrying out the installation, construction, alteration, replacement, maintenance, removal, or dismantling of any accessibility lift or private residential elevator.

(b) Limitation on applicability. A licensed accessibility and

residential elevator mechanic shall not hold out himself or herself as complying with all the elevator mechanic experience and examination requirements.

Section 2. Initial Application Requirements.

(1) Filing the application.

(a) Elevator contractor. An applicant seeking an elevator contractor license shall submit to the department:

1. A completed~~, signed, and notarized~~ Elevator Contractor License Application on Form EV-3;

2. An initial license application fee of \$240 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;~~a. The initial license fee may be prorated.~~

b. If prorated, the initial license fee shall not be prorated for less than seven (7) months or more than eighteen (18) months;

3. Proof of applicant's experience as required by KRS 198B.4011 and this administrative regulation;

4. A passport-sized color photograph of the applicant taken within the past six (6) months, except for an applicant that is a partnership, corporation, or other business entity;~~and~~

5. Proof of insurance as required by KRS 198B.4027; and;

6.~~[(b)]~~ If the elevator contractor applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(b) Elevator mechanic and accessibility and residential elevator mechanic. An applicant seeking an elevator mechanic license or an accessibility and residential elevator mechanic license shall submit to the department:

1. A completed Elevator Mechanic License Application on Form EV-4;

2. An initial license application fee of ninety-six (96) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of the applicant's experience as required by KRS 198B.4013 and this administrative regulation; and

4. A passport-sized color photograph of the applicant taken within the past six (6) months.

(2) Termination of an application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is received by the department.

(b) At the end of one (1) year, the application shall be void.

Section 3. Reciprocity.

(1) Out of state credentials.

(a) To be eligible for reciprocity, an applicant shall have a current license, certification, or registration in another state whose standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4.

(b) The license, certificate, or registration shall be equivalent to the Kentucky license requested.

(2) Application.

(a) A reciprocal elevator license applicant shall submit the appropriate application and fee:

1. For an elevator contractor applicant, a completed Elevator Contractor License Application on Form EV-3 and \$240; and

2. For an elevator mechanic applicant or an accessibility and residential elevator mechanic applicant, a completed Elevator Mechanic License Application on Form EV-4 and ninety-six (96) dollars.

(b) If applying for both licenses, an application fee shall be submitted for each license with each application form.

(3) Experience.

(a) Elevator contractor. A reciprocal elevator contractor applicant shall meet the experience requirement in subsection (1) of Section 5(1) of this administrative regulation.

(b) Elevator mechanic and accessibility and residential elevator



mechanic. A reciprocal elevator mechanic or an accessibility and residential elevator mechanic shall meet the experience required by KRS 198B.4013(2).

Section 4. Examination Requirements. An applicant for an elevator mechanic license or an accessibility and residential elevator mechanic license shall take and pass the examination administered in compliance with this section.

(1) Examination criteria.

(a) Elevator Mechanic. For an application pursuant to KRS 198B.4013(2)(a), the examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of elevators, elevator systems, and fixed guideway systems.

(b) Accessibility and Residential elevator mechanic. For an application pursuant to KRS 198B.4013(2)(b), the examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of accessibility lifts and private residential elevators.

(2) The department or its designee shall develop, administer, and score the examinations in subsection (1)(a) and (b) of this section.

(3) Reasonable accommodations shall be made to provide accessibility to disabled applicants, upon request.

(4) Except as established in subsection (8) of this section, an applicant shall pass with a score of at least seventy (70) percent on the examinations in subsection (1)(a) or (b) in this section.

(5)(a) A request to sit for an examination shall be made directly to the testing facility approved by the department.

(b) A list of facilities and contact information shall be provided by the department to applicants upon request.

(6) The cost shall not exceed \$100 for either the Kentucky Elevator Mechanic Examination or for the Kentucky Accessibility and Residential Elevator Mechanic Examination.

(7) A passing score on an approved elevator examination shall be valid for a period of three (3) years.

(8) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department or department's designee if the person or group submitting the examination demonstrates that the examinations cover the same material and require the same level of knowledge as the department's examinations.  
[Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform elevator contracting work while the license is inactive.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified elevator inspector may be licensed as an elevator contractor, but shall place the elevator contractor license in inactive status while having an active elevator inspector certification.

(4) Performing elevator contracting work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.]

Section 5.[4-] Experience Requirements.[An applicant for licensure shall meet the experience requirements of this section.]

(1) Minimum experience.

(a) Elevator contractor. An elevator contractor applicant shall have[:

(a)] a minimum of three (3) years of verifiable experience as an elevator mechanic.[;-or]

(b) Elevator mechanic and accessibility and residential elevator mechanic. An elevator mechanic applicant or an accessibility and residential elevator mechanic applicant shall meet the experience required by KRS 198B.4013(2)[A current license, certification, or registration as an elevator contractor in another state whose

standards are substantially equal to those of this Commonwealth as established in KRS Chapter 198B and 815 KAR Chapter 4].

(2) Records of experience. An applicant's experience shall be listed on the application form or included with submission of application form to the department.

(a) Proof of listed experience shall be provided by:

1. A W-2 form; or

2. An affidavit by an elevator contractor who directed and supervised the applicant[;TW-2s].

(b) Additional proof of experience shall[may] be requested by the department[; prior to or after licensing,] if the department has reason to believe that the experience shown is insufficient, falsified, or nonexistent.

Section 6. Inactive License Status.

(1) A licensee may request that a license be placed in inactive status.

(2) An elevator contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.4027.

(3) A certified elevator inspector may be licensed as an elevator contractor, elevator mechanic, or accessibility and residential elevator mechanic, but shall place the license in inactive status while having an active elevator inspector certification.

(4) A licensee shall not perform elevator work while the license is inactive. Performing elevator work while holding an inactive license shall be grounds for revocation or suspension of all elevator licenses and certifications held by the licensee.

Section 7.[5-] Renewal and Reactivation Requirements and Procedures.

(1) Filing for renewal. Licenses shall be renewed each year. To renew a license, a licensee[an elevator contractor] shall submit to the department:

(a) A completed, applicable form:

1. For elevator contractors, the[signed and notarized] Elevator Contractor License[Renewal] Application on Form EV-3[Form EV-7]; or

2. For elevator mechanics and accessibility and residential elevator mechanics, the Elevator Mechanic License Application on Form EV-4;

(b) A renewal fee made payable to the Kentucky State Treasurer of:

1. \$240 for an elevator contractor[made payable to the Kentucky State Treasurer]; or

2. Ninety-six (96) dollars for an elevator mechanic or an accessibility and residential elevator mechanic; and

(c) Proof of attendance and completion of[eight (8) hours of annual] continuing education prior to the application for renewal in accordance with 815 KAR 2:010[KRS 198B.4025; and

(d) Completed continuing provider evaluation forms for each continuing education class attended].

(2) Each application for license renewal shall be submitted by each licensee with a United States postmark dated no later than the last day of the licensee's birth month.

(3) A renewal application submitted late, but with a United States postmark dated no more than sixty (60) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 8[6](1) of this administrative regulation, shall be added to the annual renewal fee.

(4) Failure to renew within sixty (60) days after the last day of the licensee's birth month shall terminate the license[; and the applicant shall comply with all requirements for a new license pursuant to Section 2 of this administrative regulation for reinstatement. A reinstatement fee, in accordance with Section 6(2) of this administrative regulation, shall be added to the annual renewal fee].

(5) To reactivate an inactive license, the inactive licensee shall:

(a) Pay the annual renewal fee;

(b) Pay the reactivation fee pursuant to Section 8(3)[6(2)] of this administrative regulation:[and]

(c) Comply with the continuing education requirements established in 815 KAR 2:010; and

(d)[For Elevator Contractors,] Provide current proof of

~~insurance required by KRS 198B.4027 if an elevator contractor. Inactive elevator contractor status and renewal requirements.~~

~~(a) To place the elevator contractor's license in inactive status, an elevator contractor shall pay annually an inactive status fee of \$120.~~

~~(b) An inactive elevator contractor shall not:~~

~~1. Secure an elevator permit;~~

~~2. Advertise; or~~

~~3. Represent himself as an elevator contractor currently authorized to contract elevator work in the commonwealth.~~

~~(6) Continuing education requirements shall not be required for renewal, if the initial license was issued within twelve (12) months of renewal.~~

~~(7) The application for renewal or reactivation of a licensed elevator contractor shall be denied for incompleteness if the applicant fails to:~~

~~(a) Pay the fees required for renewal, reactivation, and restoration, if applicable;~~

~~(b) Comply with elevator contractor continuing education requirements;~~

~~(c) provide the current insurance certificates required by KRS 198B.4027; or~~

~~(d) Submit the renewal application as required by this section.~~

~~(8) To reactivate an elevator contractor license, the inactive elevator contractor shall pay the annual renewal fee, the additional \$120 reactivation fee, and comply with the continuing education requirements established in 815 KAR 4:050.]~~

Section 8.[6.] Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of an expired license/licenses shall be:

(a) Fifty (50) dollars for an elevator contractor; or

(b) Twenty-five (25) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(2) Reinstatement fee. The fee for reinstatement of a terminated license shall be:

(a) \$100 for an elevator contractor; or

(b) Twenty-five (25) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be

(a) \$120 for an elevator contractor; or

(b) Forty-eight (48) dollars for an elevator mechanic or accessibility and residential elevator mechanic.

(4) Duplicate license fee. A verified lost or destroyed license shall be replaced upon payment of a ten (10) dollar fee. ~~(5) Change of information fee.~~

~~(a) The fee for the change of information required by Section 1(2) of this administrative regulation shall be fifteen (15) dollars.~~

~~(b) If a change of information request is simultaneous with license renewal, this fee shall not be applicable.]~~

Section 9.[7.] Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the department for any of the reasons established in KRS 198B.4033.

Section 8.[7.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Elevator Contractor License Application", Form EV-3, November[August] 2018[September 2013]; and

(b) "Elevator Mechanic License Application", Form EV-4, November[August] 2018["Elevator License Renewal Application" Form EV-7, June 2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, Elevator Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at

<http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Housing, Buildings and Construction  
Division of Building Code Enforcement  
(As Amended at ARRS, November 13, 2018)**

**815 KAR 7:070. The Kentucky Certified Building Inspector Program.**

RELATES TO: KRS 198B.010(6), 198B.040(3), 198B.050(3)(c), (6), 198B.060, 198B.090, 198B.095

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.090(1)(a), (b), 198B.095(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the department[office] to create and administer a building inspector's certification program and a plans and specifications inspector's certification program with sufficient testing procedures[which is designed to ensure uniform statewide enforcement of applicable state building codes]. KRS 198B.050(5) requires the department[board] to promulgate administrative regulations necessary to implement the Uniform State Building Code. KRS 198B.095(1) authorizes the department[board] to promulgate an administrative regulation to establish a building inspector training program. This administrative regulation establishes the testing, training, and continuing education, and enforcement responsibilities[requirements] for qualifying persons to become inspectors for the enforcement of the Kentucky Building Code and[.] the Kentucky Residential Code[, and to identify the level of their responsibilities for this enforcement].

Section 1. Definitions.

(1) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(2) "General supervision" means that the supervising authority oversees the work performed overall, but is not required to be on-site at all times during plan reviews and inspections.

(3) "ICC test module" means a test module, from the International Code Council, that is used to meet the module testing requirements established in Section 5[7] of this administrative regulation.

(4) "Limited certificate" means a document establishing that a person:

(a) Has passed the test for competency in one (1) or more NCPCCI or ICC test modules; and

(b) Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(5) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 5[7] of this administrative regulation.

(6) "Trainee" means a person who is enrolled in the building inspector program of the department, but has not completed the NCPCCI or ICC test modules necessary to be a certified building inspector.

Section 2. Inspection Operations.

(1)(a) Each governmental entity engaged in a building

inspection program shall have at least one (1) certified building inspector with the level of credentials required for buildings covered by the governmental entity's program.

- (b) The certified building inspector shall be responsible for all:  
1. Construction document approvals;  
2. Inspections; and  
3. Issuance of certificates of occupancy.

(2) A trainee may be used in a building inspection program. If used:

(a) The trainee shall operate under the general supervision of a certified building inspector.

- (b) A trainee shall not issue:  
1. Permits;  
2. Construction document approval letters;  
3. Inspection compliance letters; or  
4. Certificates of occupancy.

(c) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(3)(a) A person making inspections as authorized by this administrative regulation shall not overrule, supplant, or order corrections or alterations that conflict with the approved construction documents.

(b) If an inspector believes construction documents are incorrect or the construction is in violation of the Kentucky Building Code or the Kentucky Residential Code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(4)(a) A local building inspector shall not perform the inspections or plan reviews on buildings assigned to the department by KRS 198B.060(4) unless the local governmental entity petitioned and was approved for expanded jurisdiction in accordance with 815 KAR 7:110.

(b) A local building inspector shall only perform inspections or plan reviews as outlined in the expanded jurisdiction agreement with the department.

(5) A person making inspections pursuant to a limited certificate shall be supervised by a certified building inspector with a level I certification or higher.

(6) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

### Section 3. Application for Training and Certification.

(1) An applicant seeking to become a trainee or a candidate for certification shall submit to the department:

- (a) A completed Initial Application Form, DHBC - BC/CP 1;  
(b) A fifty (50) dollar application fee; and  
(c) Written proof that the applicant has:

1. Graduated from high school or earned a general education diploma; and

a. Two (2) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

~~b. [2.]~~ Two (2) years experience in an architect's or engineer's office performing building design or drafting duties;

~~2. [3.]~~ Graduated from a college or university with an associate degree in a design, building technology, or construction-related subject; or

~~3. [4.]~~ Graduated from a college or university with a bachelor's degree in architecture, engineering, fire science, or building technology.

(2) A person shall not engage in inspection activities for the enforcement of the Kentucky Building Code or the Kentucky Residential Code unless that person receives certification from the department.

Section 4. Training and Testing Requirements. A candidate seeking to become a certified building inspector and all trainees shall:

- (1) Attend orientation training provided by or approved by the

department; and

(2) Submit proof of completing a minimum of twelve (12) hours of continuing education training annually. Proof may be submitted by:

(a) A completed Continuing Education Verification ~~[a.]~~ Form, DHBC - BC/CE 1; or

(b) A certificate of completion provided by a pre-approved training provider.

### Section 5. Certification Requirements, Responsibilities, and Jurisdiction for Certified Inspectors.

(1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person passed the following:

1. NCPCCI test modules:

- a. Test 1A Building One- and Two-Family Dwelling; and  
b. Test 4A Mechanical One- and Two-Family Dwelling; or

2. ICC test modules:

- a. Test B1 Residential Building Inspector; and  
b. Test M1 Residential Mechanical Inspector; and

(b) Complied with the requirements of this administrative regulation.

(c) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the Kentucky Residential Code. A one (1) and two (2) family dwelling inspector shall be qualified to do the following for the construction of one (1) and two (2) family dwellings and townhouses:

1. Issue permits;  
2. Review and approve construction documents;  
3. Conduct on-site inspections; and  
4. Issue compliance letters and certificates of occupancy  
(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has passed the following:

1. NCPCCI test modules:

- a. Test 1A Building One- and Two-Family Dwelling;  
b. Test 4A Mechanical One- and Two-Family Dwelling;  
c. Test 1B Building General; and  
d. Test 3B Fire Protection General; or

2. ICC test modules:

- a. Test B1 Residential Building Inspector;  
b. Test B2 Commercial Building Inspector; and  
c. Test M1 Residential Mechanical Inspector; and

(b) Complied with the requirements of this administrative regulation.

(c) A building inspector, level I, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code and the Kentucky Residential Code. A building inspector, level I, shall be qualified to do the following for buildings of the occupancy, type, and size assigned to local governments by KRS 198B.060(2):

1. Issue permits;  
2. Review and approve construction documents;  
3. Conduct on-site inspections; and  
4. Issue compliance letters and certificates of occupancy  
(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has passed the following:

1. NCPCCI test modules:

- a. Test 1A Building One- and Two-Family Dwelling;  
b. Test 4A Mechanical One- and Two-Family Dwelling;  
c. Test 1B Building General;  
d. Test 3B Fire Protection General; and  
e. Test 4B Mechanical General; or

2. ICC test modules:

- a. Test B1 Residential Building Inspector;  
b. Test B2 Commercial Building Inspector;  
c. Test M1 Residential Mechanical Inspector; and  
d. Test M2 Commercial Mechanical Inspector; and

(b) Complied with the requirements of this administrative regulation.

(c) 1. A building inspector, level II, shall be qualified to perform the same functions as a building inspector, level I, as set out in subsection (2)(c) ~~(b)~~ of this administrative regulation; and

2. A building inspector, level II, shall be qualified to conduct on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has passed the following:

1. NCPCCI test modules:

- a. Test 1A Building One- and Two-Family Dwelling;
- b. Test 4A Mechanical One- and Two-Family Dwelling;
- c. Test 1B Building General;
- d. Test 3B Fire Protection General;
- e. Test 4B Mechanical General;
- f. Test 1C Building Plan Review;
- g. Test 3C Fire Protection Plan Review; and
- h. Test 4C Mechanical Plan Review; or

2. ICC test modules:

- a. Test B1 Residential Building Inspector;
- b. Test B3 Building Plans Examiner;
- c. Test M1 Residential Mechanical Inspector; and
- d. Test M3 Mechanical Plans Examiner; and

(b) Complied with the requirements of this administrative regulation.

(c) A building inspector, level III, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code and the Kentucky Residential Code. A building inspector, level III, shall be qualified to do the following for all buildings regardless of size or occupancy type:

- 1. Issue permits;
- 2. Review and approve construction documents;
- 3. Conduct on-site inspections; and
- 4. Issue compliance letters and certificates of occupancy

(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has passed the following:

1. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling test module; or

2. ICC Test M1 Residential Mechanical Inspector test module; and

(b) Complied with the requirements of this administrative regulation.

(c) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has passed the following:

- 1. NCPCCI Test 4B Mechanical General test module; or
- 2. ICC Test M2 Commercial Mechanical Inspector test module; and

(b) Complied with the requirements of this administrative regulation.

(c) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance, and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has passed the following:

1. NCPCCI test modules:

- a. Test 4A Mechanical One- and Two-Family Dwelling;
- b. Test 4B Mechanical General; and
- c. Test 4C Mechanical Plan Review; or

2. ICC test modules:

- a. Test M1 Residential Mechanical Inspector; and
- b. Test M3 Mechanical Plans Examiner; and

(b) Complied with the requirements of this administrative

regulation.

(c) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize other examinations as equivalent to the listed NCPCCI or ICC examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI or ICC examinations.

#### Section 6. Inactive Certification.

(1) A certified inspector or an inspector holding a limited certificate may request that the certification be placed in an inactive status by notifying the department in writing.

(2) A certified inspector whose certification is inactive shall not:

(a) Perform an inspection while the certification is inactive; and

(b) Be required to obtain annual continuing education during the inactive status.

#### Section 7. Renewal, Reactivation, and Reinstatement.

(1) Renewal.

(a) A certified inspector, trainee, or an inspector holding a limited certificate, shall submit to the department not later than the last day of the certified inspector or trainee's birth month:

1. An annual renewal fee of fifty (50) dollars; and

2. Proof of completion of the continuing education requirements pursuant to 815 KAR 2:010.

(b) A late fee of fifty (50) dollars shall be assessed if renewal is not postmarked by the last day of the certified inspector or trainee's birth month.

(c) Certification shall terminate if a certified inspector or trainee fails to renew ninety (90) days after the last day of that person's birth month.

(2) Reactivation. A certified inspector or inspector holding a limited certificate whose certification is inactive may reactivate the certification by submitting to the department:

(a) Proof of completion of continuing education pursuant to 815 KAR 2:010 within twelve (12) months prior to the request for reactivation; and

(b) Payment for one-half (1/2) the fee for an active certification in addition to the renewal fee in subsection (1)(a)1 of this section.

(3) Reinstatement. (a) A certified building inspector whose certification has been terminated may be reinstated no more than three (3) years of the date of termination by submitting to the department:

1. A reinstatement fee equal of fifty (50) dollars; and

2. The renewal fee in subsection (1)(a)1 of this section.

(b) Reinstatement after the three (3) year period shall require the applicant to successfully complete the examinations corresponding to the certification level sought for reinstatement.

#### Section 8. Suspension and Revocation of Certification.

(1) Complaints concerning a certified inspector shall be submitted to the department in writing for review.

(2) Subject to a hearing conducted in accordance with KRS Chapter 13B, the commissioner may suspend or revoke a certified inspector's certification if he or she determines after a thorough investigation of the evidence that the certified inspector is:

(a) Not enforcing the Kentucky Building Code;

(b) Not enforcing the Kentucky Residential Code;

(c) Improperly enforcing the Kentucky Building Code;

(d) Improperly enforcing the Kentucky Residential Code; or

(e) Violating his or her responsibilities as an inspector.

#### Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial Application Form", DHBC-BC/CP 1, August 2018;

and

(b) "Continuing Education Verification Form", DHBC-BC/CE 1, August 2018;

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>. [Section 1. Definitions. (1) "Certified building inspector" is defined by KRS 198B.010(6).

(2) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(3) "ICC test module" means a test module, from the International Code Council, that is used to meet the module testing requirements established in Section 7 of this administrative regulation.

(4) "Limited certificate" means a document establishing that a person:

(a) Has passed the test for competency in one (1) or more NCPCCI or ICC test modules; and

(b) Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(5) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 7 of this administrative regulation.

(6) "Trainee" means a person who is enrolled in the building inspector program of the department, but has not completed the NCPCCI or ICC test modules necessary to be a Kentucky certified building inspector.

Section 2. Inspection Operations. (1) Each governmental entity engaged in a building inspection program shall have, in responsible charge of all construction document approvals, inspections and issuance of certificates of occupancy, at least one (1) Kentucky certified building inspector with the level of credentials required for the buildings covered by the program.

(2) A trainee may be utilized in a building inspection program. If a trainee is utilized in a building inspection program, the trainee shall operate under the general supervision of a Kentucky certified building inspector.

(a) A trainee shall not issue a permit, construction document approval letter, inspection compliance letter, or certificate of occupancy.

(b) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(c) A limited certificate shall not be available to persons who apply after March 22, 2001.

Section 3. Training and Testing Requirements to Become Certified. A candidate seeking certification shall comply with the provisions of this section:

(1) A candidate seeking to become certified pursuant to this administrative regulation and all trainees shall be required to attend orientation training, provided or approved by the department pursuant to subsection (2)(d) of this section. The training sessions shall be given quarterly.

(2) Continuing education:

(a) Continuing education programs shall be conducted by:

1. The department;

2. The Code Administrators Association of Kentucky (CAAK);

or

3. A provider that is approved by the department pursuant to paragraph (d) of this subsection.

(b) The board may fund a continuing education program through the Building Inspectors' Financial Incentive Training Program Fund.

(c) A candidate seeking certification or a trainee seeking to

continue as a trainee shall:

1. Complete a minimum of twelve (12) hours of continuing education training annually; and

2. Submit verification of completion on either:

a. Continuing Education Verification Form, DHBC BC/CE-1; or

b. A certificate of completion provided by a pre-approved training provider.

(d) 1. A provider shall submit a completed Continuing Education Course Approval Request Form, DHBC-BC/CE 2 to the department no less than thirty (30) days prior to the date the educational program will be offered.

2. The program shall be recognized as approved training for the Kentucky Certified Building Inspector Program if the program:

a. Relates to the general business skills or the technical skills required of a certified inspector;

b. Contains sufficient educational content to improve the quality of a certified inspector's performance; and

c. Includes a course evaluation.

3. The written request shall include the following:

a. The total number of continuing education hours;

b. Course syllabus;

c. A detailed outline of the contents of the course;

d. Name and address of the vendor;

e. Name, address, and qualifications of each instructor;

f. Program agenda with written description of class material which clearly identifies that the educational content relates to the general business skills or the technical skills required of a certified inspector which would improve the quality of the certified inspector's performance; and

g. Location and keeper of class attendance verification list, which shall be available for at least twelve (12) months after completion of the educational program. The department shall be electronically advised of attendees and course completions.

(3) The commissioner shall waive the time requirements established in this administrative regulation for hardships shown or if circumstances warrant a waiver due to changes in testing procedures, standards, or dates.

Section 4. Application for Training and Certification. (1) To become a trainee or a candidate for certification, a person shall submit:

(a) A completed Initial Application Form, DHBC BC/CP-1;

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has met the requirements established in subsection (2) of this section.

(2) An applicant shall have:

(a) 1. Graduated from high school or earned a general education diploma; and

2.a. Three (3) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

b. Three (3) years experience in an architect's or engineer's office performing building design or drafting duties;

(b) Graduated from a college or university with an associate degree in a design, building technology or construction-related subject; or

(c) Graduated from a college or university with a bachelor's degree in architecture, engineering, fire science, or building technology.

(3) A person shall not engage in inspection activities for the enforcement of the Kentucky Building Code or the Kentucky Residential Code, 815 KAR 7:125, unless that person is currently enrolled with the department and has otherwise complied with the requirements of this administrative regulation.

Section 5. Renewal and Reinstatement. (1) A certified inspector or trainee, including an inspector holding a limited certificate, shall pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month annually.

(a) A late fee of fifty (50) dollars shall be assessed if renewal is not postmarked by the last day of the certified inspector or trainee's

birth month.

(b) If a certified inspector or trainee fails to renew ninety (90) days after the last day of that person's birth month, certification shall terminate.

(2)(a) A reinstatement fee for a terminated certification shall be equal to the renewal fee and shall be paid in addition to the renewal fee.

(b) A terminated certification may be reinstated if application is made within three (3) years from the date of termination and shall not require examination for reinstatement.

Section 6. Inactive License Certification. (1) A certified inspector or an inspector holding a limited certificate may request that the certification be placed in an inactive status and shall:

(a) Not perform an inspection while the certification is inactive;

(b) Pay an inactive fee of one-half (1/2) of the renewal fee annually on or before the last day of the certified inspector's birth month; and

(c) Not be required to obtain yearly continuing education during the inactive status. Within twelve (12) months prior to a request for re-activation, twelve (12) hours of continuing education shall be obtained.

(2) Upon a request to reactivate an inactive certification, an inspector shall pay one-half (1/2) the fee for an active certification.

Section 7. Certification Requirements, Responsibilities, and Jurisdiction for Inspectors.

(1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person has:

1. Been tested for competency under the Kentucky Residential Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling; and
- (ii) Test 4A Mechanical One- and Two-Family Dwelling; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector; and
- (ii) Test M1 Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the Kentucky Residential Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for the construction of one (1) and two (2) family dwellings and townhouses.

(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has:

1. Been tested for competency under the Kentucky Residential Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General; and
- (iv) Test 3B Fire Protection General; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B2 Commercial Building Inspector; and
- (iii) Test M1 Residential Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level I, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code and the Kentucky Residential Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for all buildings of the occupancy type and size assigned to local governments by KRS 198B.060(2).

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has:

1. Been tested for competency under the Kentucky Residential Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General;
- (iv) Test 3B Fire Protection General; and
- (v) Test 4B Mechanical General; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B2 Commercial Building Inspector;
- (iii) Test M1 Residential Mechanical Inspector; and
- (iv) Test M2 Commercial Mechanical Inspector; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level II, shall be qualified to perform functions related to the enforcement of the Kentucky Building Code and Kentucky Residential Code for all buildings of the occupancy type and size assigned to local government under KRS 198B.060(2) including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy.

(c) A building inspector, level II, shall be qualified to conduct on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has:

1. Been tested for competency under the Kentucky Residential Code, Mechanical Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

- (i) Test 1A Building One- and Two-Family Dwelling;
- (ii) Test 4A Mechanical One- and Two-Family Dwelling;
- (iii) Test 1B Building General;
- (iv) Test 3B Fire Protection General;
- (v) Test 4B Mechanical General;
- (vi) Test 1C Building Plan Review;
- (vii) Test 3C Fire Protection Plan Review; and
- (viii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

- (i) Test B1 Residential Building Inspector;
- (ii) Test B3 Building Plans Examiner;
- (iii) Test M1 Residential Mechanical Inspector; and
- (iv) Test M3 Mechanical Plans Examiner; and

2. Complied with the requirements of this administrative regulation.

(b) A building inspector, level III, shall be qualified to perform all functions relating to the enforcement of the Kentucky Building Code and Kentucky Residential Code, including issuing permits, reviewing and approving construction documents conducting, on-site inspections and issuing compliance letters and certificates of occupancy for all buildings, regardless of size or occupancy type. A local inspector shall not be authorized to perform these functions on buildings assigned to the department by KRS 198B.060(4), except by petition to and approval of more inspection responsibility by the department pursuant to 815 KAR 7:110.

(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has:

1. Been tested for competency under the Kentucky Residential Code by passing the:

a. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling test module; or

b. ICC Test M1 Residential Mechanical Inspector test module; and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.



(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has:

1. Been tested for competency under the Mechanical Code, by passing:

- a. NCPCCI Test 4B Mechanical General test module; or
- b. ICC Test M2 Commercial Mechanical Inspector test module;

and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has:

1. Been tested for competency under the Kentucky Residential Code and the Mechanical Code, by passing the following:

- a. NCPCCI test modules:
  - (i) Test 4A Mechanical One- and Two-Family Dwelling;
  - (ii) Test 4B Mechanical General; and
  - (iii) Test 4C Mechanical Plan Review; or
- b. ICC test modules:
  - (i) Test M1 Residential Mechanical Inspector; and
  - (ii) Test M3 Mechanical Plans Examiner; and

2. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Kentucky Residential Code and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Trainees and limited certificates.

(a) A person making inspections pursuant to a limited certificate shall be supervised by a Kentucky certified building inspector with a level I certification or higher.

(b) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

(c) A trainee or a person with a limited certificate shall not issue permits, construction document approval letters, compliance letters or certificates of occupancy, or make any official or final determinations relating to the Kentucky Building Code.

(9) A person making inspections as authorized by this administrative regulation shall not overrule, supplant, or order corrections or alterations which conflict with the approved construction documents. If an inspector believes that the construction documents are wrong or that the construction is in violation of the code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(10) Upon application by a testing agency, a national code group, or by an applicant for certification, the department may recognize other examinations as equivalent to the listed NCPCCI or ICC examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI or ICC examinations.

Section 8. Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector shall be submitted to the Department of Housing, Buildings, and Construction for review and authorized disciplinary action.

(2) Action shall not be taken against a building inspector governed pursuant to this administrative regulation until a hearing

has been held upon request or waived in accordance with KRS Chapter 13B, and the commissioner determines based on investigation and evidence that the inspector is:

- (a) Not enforcing the Kentucky Building Code;
- (b) Not enforcing the Kentucky Residential Code;
- (c) Improperly enforcing the code; or
- (d) Violating his or her responsibilities as an inspector.

Section 9. Grandfather Clause. (1) A person who was certified as a building inspector, level I, II, or III, or who held a limited certificate on or before December 15, 1997 shall:

(a) Not be required to take additional test modules to renew the certification, if the person has maintained continuous certification since December 15, 1997; and

(b) Complete the continuing education requirements as established in Section 3 of this administrative regulation prior to renewal of the certificate.

(2) A person who was certified as of March 22, 2001, but who seeks to achieve a higher level of certification, shall comply with the testing modules required by this administrative regulation.

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

- (a) "Continuing Education Verification Form", DHBC-BC/CE-1, October 2009;
- (b) Initial Application Form", DHBC-BC/CP 1, October 2009; and

(c) "Certified Building Inspector Continuing Education Course Approval Request", DHBC-BC/CE 2, December 2012.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.]

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Housing, Buildings and Construction  
Division of Heating, Ventilation and Air Conditioning  
(As Amended at ARRS, November 13, 2018)**

**815 KAR 8:010. Licensing requirements for master[heating, ventilation, and air conditioning (HVAC)] contractors and journeyman HVAC mechanics[contractor licensing requirements].**

RELATES TO: KRS 198B.650, 198B.654, 198B.656, 198B.658, 198B.659, 198B.660, 198B.664, 198B.668, 198B.672, 198B.676

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658, 198B.660(1), (2), 198B.664(1), (3), 198B.676(1)[, 198B.684]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department[Board of Heating, Ventilation and Air Conditioning Contractors] to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through[to] 198B.689. KRS 198B.658 requires the department[board] to establish qualifications for licensure and certification. KRS 198B.660(1) and (2) require the department[board] to establish examination requirements. KRS 198B.664 requires the department[board] to establish requirements for license renewal and inactive licenses. [KRS 198B.684 authorizes the board to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders.] KRS 198B.676(1) requires the department[board] to establish fees by administrative regulation. This administrative

regulation establishes the licensure requirements for master HVAC contractors and journeyman HVAC mechanics.

Section 1. General Requirements.

(1) Master HVAC Contractor.

~~(a) Continuing education.~~

~~(a) Each master HVAC contractor licensee shall complete eight (8) hours of continuing education prior to renewal of the license.~~

~~(b) Continuing education shall be conducted in accordance with 815 KAR 8:050.~~

(2) Supervision. The master HVAC contractor shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee or the company that the licensee represents, whichever is applicable.

(b)(3) Company license. (a) A licensee who is an employee of a company and whose license represents the company [shall notify the board, in writing], if the licensee ceases to represent the company or if the name of the company changes, shall:

1. Notify the department in writing; and

2. Request a change of information (b) A licensee providing the notice established in paragraph (a) of this subsection shall request a change of information on that license.

~~(c) A licensee requesting a change of information as established in paragraph (b) of this subsection shall pay the change of information fee established in Section 7(5) of this administrative regulation.~~

(c) Death of a master HVAC contractor.

1. If the master HVAC contractor representing a company dies, the company shall notify the department within ten (10) days of the master HVAC contractor's death.

2. The 180 day interim period described in KRS 198B.667 shall begin on the date the master HVAC contractor dies.

3. The company shall not be required to renew the deceased's master HVAC contractor license, if the license renewal date falls within the 180 day interim period.

4. The company shall not use the deceased master HVAC contractor license after the expiration date of the interim period.

5. The company shall notify the department when the company has a replacement master HVAC contractor to represent the company on or before the expiration date of the interim period.

(2) Journeyman HVAC mechanic.

~~(a) Supervision. The journeyman shall:~~

~~(a) 1. Be physically on site;~~

~~(b) 2. Personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration, and repair of HVAC systems; and~~

~~(c) 3. Otherwise operate under the general direction and supervision of the master HVAC contractor.~~

Section 2. Initial Application Requirements.

(1) Filing the application.

(a) Master HVAC contractor application. An applicant seeking a master HVAC contractor license shall submit to the department [board]:

1. A completed [and notarized] Master HVAC Contractor License Application on Form HVAC 1;

2. An initial license application fee of \$250 for a twelve (12) month license. ~~The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;~~

3. [Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation;

4. Proof of the applicant's experience as required [established] by KRS 198B.658(1)(c) and this administrative regulation; and

4.5. A passport-sized, color photograph of the applicant taken within the past six (6) months; and

6. Proof of insurance as required by KRS 198B.668.

~~(b) 5. (b) If the master HVAC contractor applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.~~

~~(c) (b) Journeyman HVAC mechanic application. An applicant~~

seeking a journeyman HVAC mechanic license shall submit to the department:

1. A completed Journeyman HVAC Mechanic License Application on Form HVAC 2;

2. An initial license application fee of fifty (50) dollars for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 198B.658(2)(c).

~~(d) (e) Initial license fees may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.~~

~~(e) (d) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department proof of satisfactory completion of the respective examination required by Section 4 of this administrative regulation.~~

~~(f) (e) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department a passport-sized, color photograph of the applicant taken within the past six (6) months.~~

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted to the department.

(b) At the end of one (1) year, the application shall be void.

Section 3. An applicant for reciprocity shall:

(1) Comply with the requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(2)(a) For a Master HVAC Contractor license, an applicant shall comply with Section 2(1)(a) and (b) of this administrative regulation.

(b) For a Journeyman HVAC mechanic license, an applicant shall comply with Section 2(1)(c) ~~(b)~~ of this administrative regulation.

(c) If applying for both licenses, an application fee shall be submitted for each license with each application form [Section 3. Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform HVAC work while the license is inactive.

(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified HVAC inspector may be licensed as a master HVAC contractor, but shall place the license in inactive status while having an active HVAC inspector certification.

(4) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee].

Section 4. Examinations [Examination] [Requirements.—An applicant shall take and pass the examination administered in compliance with this section].

(1) The HVAC examinations shall be developed, administered, and scored by the department or its designee.

(2) Master HVAC Contractor examination requirements. The examination shall [be a two (2) part examination and shall] test the applicant's knowledge of:

(a) Codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of all types of HVAC systems; and

(b) Law and regulation relating to HVAC business.

(3) Journeyman HVAC mechanic [mechanics] examination requirements.

(a) The examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, and repair, remodeling, or alteration of all types of HVAC systems.

(b) A journeyman HVAC mechanic applicant may apply the

passage of a master HVAC contractor's examination for the journeyman HVAC mechanic's examination requirement. The applicant may use the same master HVAC contractor's examination score to satisfy the master HVAC contractor's examination requirement ~~if as long as~~ the examination score is valid pursuant to subsection (7) of this section. (2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(4)(3) Except as provided in subsection (8) of this section, an applicant shall pass with a ~~complete with a passing~~ score of at least seventy (70) percent on the examination ~~known as the Kentucky Master HVAC Contractor Examination, which is developed, administered, and scored by the~~ ~~board~~ ~~or its designee~~.

(5)(4) (a) A request to sit for the examination shall be made directly to the testing facilities approved by the ~~department~~ ~~board~~.

(b) A list of facilities and contact information shall be provided by the ~~department~~ to applicants upon request. ~~[(5) The examination fee shall not exceed \$160 for the Kentucky Master HVAC Contractor Examination.]~~

(6) The examination shall be provided as set forth in KRS 198B.660.

(7) A passing score on the examination shall be valid for a period of ~~three (3)~~ ~~two (2)~~ years.

(8) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the ~~department~~ ~~board~~ if the person or group submitting the examination demonstrates that the examination covers the same material and requires the same level of knowledge as the ~~department's~~ ~~board's~~ examination.

(9) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

Section 5. Experience Requirements. ~~[An applicant for licensure shall meet the requirements of this section.]~~

(1) ~~Minimum experience. An applicant shall have the experience required by KRS 198B.658(1)(c).~~

(2) Records of experience. An applicant's experience shall be listed on the application form.

(a) Proof of listed experience shall be provided by:

1. A W-2 form;

2. An affidavit by a master HVAC contractor who directed and supervised the applicant;

3. A copy of a current master HVAC contractor license, journeyman HVAC mechanic license, or equivalent, held by the applicant in a state other than Kentucky, if the state requires licensure or the equivalent;

4. Verifiable documentation demonstrating the nature and extent of HVAC contracting work performed in a state other than Kentucky, if the state does not require licensure or the equivalent; or

5. Department of Defense Form DD 214.

(b) Additional proof of experience shall be requested by the ~~department~~ ~~board~~, prior to or after licensing, if the ~~department~~ ~~board~~ has reason to believe that the experience shown is insufficient or nonexistent.

(2)(3) One (1) year of HVAC experience shall consist minimally of 1,500 hours of HVAC work in a contiguous twelve (12) month period.

#### Section 6. Inactive License Status.

(1) A licensee may request that a license be placed in inactive status.

(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668.

(3) A license that is in inactive status shall be exempt from annual renewal.

(4) A certified HVAC inspector may be licensed as a master HVAC contractor or licensed as a journeyman HVAC mechanic, but shall place the license in inactive status while having an active HVAC inspector certification.

(5) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses

and certifications held by the licensee.

Section 7. [6.] Renewal, Restoration, Reinstatement, and Reactivation Requirements and Procedures.

(1) Filing for renewal. A master HVAC contractor and a journeyman HVAC mechanic shall submit to the department:

(a) A completed renewal application ~~notice~~ ~~card~~;

(b) 1. A renewal fee of \$250 made payable to the Kentucky State Treasurer for a master HVAC contractor; or

2. A renewal fee of fifty (50) dollars made payable to the Kentucky State Treasurer for a journeyman HVAC mechanic; and

(c) Proof of annual continuing education attendance in accordance with 815 KAR 2:010 ~~[Section 4 of this administrative regulation]; and~~

(d) Proof of insurance as required by KRS 198B.668 for a master HVAC contractor.

(2)(a) Except for a license placed in inactive status ~~[in accordance with subsection (6) of this section and Section 7(2) of this administrative regulation]~~, application for license renewal shall be filed ~~[by each licensee]~~ no later than the last day of the licensee's birth month.

(b) A license shall be renewed each year.

(c) A license that is not timely renewed shall immediately expire.

(3)(a) The renewal fee shall be paid prior to renewal.

(b) The department shall send a renewal application ~~notice~~ ~~card~~ to each licensee each year to be returned with the required fee.

(4) A renewal application ~~notice~~ ~~card~~ filed late, but no more than sixty (60) days after the expiration of the license, shall be accepted, but a restoration fee, as established in Section 8(1) ~~[7(4)]~~ of this administrative regulation, shall be added to the renewal fee.

(5)(a) A former licensee whose license has terminated as established in KRS 198B.664(3) may have his or her license reinstated if the licensee satisfies the application requirements for renewal as established in subsection 1 of this section ~~[Section 6(4) of this administrative regulation]~~ and submits a reinstatement fee as established in Section 8(4) ~~[6]~~ ~~[7(6)]~~ of this administrative regulation no later than three (3) years from the date the former license was terminated.

(b) A former licensee seeking licensure under this administrative regulation, but whose terminated license was not timely reinstated as established in paragraph (a) of this subsection, shall be required to satisfy all requirements applicable to new applicants for initial licensure as established in this administrative regulation.

~~(6)(a) A license that is in inactive status shall be exempt from annual renewal.~~

~~(b) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010~~ ~~[815 KAR 8:050].~~

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) The application for renewal, restoration, reinstatement, or reactivation ~~[of a licensed master HVAC contractor]~~ shall be denied if the applicant fails to:

(a) Pay any applicable department fee;

(b) Comply with the continuing education requirements established in 815 KAR 2:010 ~~[1:0-0]~~ ~~[Section 1(1) of this administrative regulation]; or~~

(c) Provide the current insurance certificate required by KRS 198B.668, if a master HVAC contractor.

(9) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal.

Section 8. [7.] Special Service Fees. In addition to the other fees required by this administrative regulation, the special fees established in this section shall also be applied.

(1) Restoration fee.

(a) The fee for restoration of an expired master HVAC contractor license shall be \$125.

(b) The fee for restoration of an expired journeyman HVAC mechanic license shall be twenty-five (25) dollars.

(2) Inactive status fee. ~~[(a) A licensee may place the license in inactive status.] The fee to place a license into inactive status shall be twenty (20) dollars. [(b) Inactive status shall be maintained upon annual payment of the inactive status fee by the last day of the licensee's birth month.~~

~~(c) Inactive status shall be maintained in accordance with this subsection until the licensee requests reactivation in accordance with Section 6(6)(b) of this administrative regulation.~~

~~(d) An inactive license that is not maintained in accordance with this subsection or reactivated in accordance with Section 6(6)(b) of this administrative regulation shall immediately terminate.]~~

(3) Reactivation fee. The fee for reactivation of an inactive license shall be twenty (20) dollars.

(4) ~~Duplicate license fee. A lost or destroyed license shall be replaced upon payment of a twenty (20) dollar fee.~~

(5) Change of information fee. The fee for the change of information required by Section 1(3) of this administrative regulation shall be twenty (20) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

~~(6)] Reinstatement fee.~~

(a) Master HVAC contractor. The fee for reinstatement of a terminated master HVAC contractor license shall be \$250 for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$750.

(b) Journeyman HVAC mechanic. The fee for reinstatement of a terminated journeyman HVAC mechanic license shall be fifty (50) dollars for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$150.

Section 9.[8.] Revocation or Suspension of License. A license issued pursuant to this administrative regulation shall be subject to suspension or revocation by the department[board] for any of the reasons stated in KRS 198B.672.

Section 10.[9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "[Form HVAC-1.] Master HVAC Contractor License Application", Form HVAC 1, November[August] 2018; and

(b) Journeyman HVAC Mechanic License Application", Form HVAC 2, November[August] 2018[July 2014, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

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#### PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction  
Division of Heating, Ventilation and Air Conditioning  
(As Amended at ARRS, November 13, 2018)

**815 KAR 8:030. ~~Apprentice[heating, ventilation, and air conditioning (HVAC)] mechanic registration and certification requirements.~~**

RELATES TO: KRS 198B.650, 198B.656, 198B.658,

~~[198B.662,]~~ 198B.664

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658(4)[198B.658(3)(a)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department[Board of Heating, Ventilation and Air Conditioning Contractors] to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 through 198B.689. KRS 198B.658(4) requires the department to establish an apprentice heating, ventilation, and air conditioning mechanic's certificate and the process to register as an apprentice[requiring unlicensed persons engaged in heating, ventilation and air conditioning (HVAC) to be registered]. This administrative regulation establishes the requirements for registration and certification of HVAC apprentices.

#### Section 1. Registration of Apprentices.

(1) An apprentice heating, ventilation, and air conditioning mechanic, as defined by KRS 198B.650(2), may register[Except for those HVAC apprentices registered with the Division of Employment Standards, Department of Labor, all apprentices defined by KRS 198B.650, shall be registered] with the department[board] by complying with this administrative regulation.

(2) Each individual who registers with the department[board] shall be issued an HVAC certificate of apprenticeship[pursuant to KRS 198B.658(3) and this administrative regulation].

(3)~~[The HVAC Apprentice Registration form shall be updated by the apprentice and submitted to the board to update change of address or change of employer.~~

(4) The HVAC certificate of apprenticeship[registration] shall authorize an individual to work in the HVAC trade under:

(a) The direct supervision of at least one (1) journeyman HVAC mechanic; and

(b) The general supervision of a master HVAC contractor. ~~[(5) The registration application shall include the license number and signature of the supervising master contractor.]~~

#### Section 2. Application for Registration.

(1) Initial application for Apprentice certificate of apprenticeship[Registration]. Registration shall be accomplished by submitting to the department:

(a) A completed Apprentice HVAC[Apprentice] Registration Form, Form HVAC 3;

(b) A recent passport-sized, color[size] photograph of the applicant that is taken within the past six (6) months[not more than sixty (60) days prior to submittal]; and

(c) The signature and license number of the supervising master HVAC contractor on the registration application[filling a completed HVAC Apprentice Registration Form, Form HVAC 3, with the board including a passport-sized photograph. The photograph shall be taken not more than sixty (60) days prior to submitting the HVAC Apprentice Registration Form].

(2) Change of information. The Apprentice HVAC[Apprentice] Registration Form, Form HVAC 3, shall be updated by the apprentice and submitted to the department to update change of address or change of employer.

~~(3)[Section 3. Minimum Number of Hours of Experience. (1) 3,000 verifiable work hours shall be the minimum number of work hours accepted as the required two (2) years of experience for an HVAC journeyman mechanic license pursuant to 815 KAR 8:020.~~

~~(2) The apprentice shall retain personal records of employment hours to verify the experience required for a journeyman HVAC mechanic license.~~

#### Section 3.[4.] Incorporation by Reference.

(1) "Apprentice HVAC[Apprentice] Registration Form", Form HVAC 3, August 2018[2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Heating, Ventilation, and Air Conditioning[HVAC], 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[5405], Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

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**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing, Boiler Section**  
**(As Amended at ARRS, November 13, 2018)**

**815 KAR 15:080. Boiler and pressure vessel licenses**  
**[Licensing for boiler and pressure vessel contractors, owner**  
**facilities, owner's piping inspectors, and independent**  
**inspection agencies].**

RELATES TO: KRS 236.097, 236.210

STATUTORY AUTHORITY: KRS 236.030, 236.097,  
236.210[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.030  
requires the commissioner to promulgate administrative regulations  
that establish reasonable standards for the safe construction,  
installation, inspection, and repair of boilers, pressure vessels, and  
associated pressure piping in Kentucky. KRS 236.210  
requires[authorizes] the commissioner[, through the Board of Boiler  
and Pressure Vessel Rules] to establish reasonable fees for the  
licensing of all[new] boiler and pressure vessel contractors. [KRS  
236.030 authorizes the commissioner, through the Board of Boiler  
and Pressure Vessel Rules, to fix reasonable standards for the  
safe construction, installation, and repair of boilers, pressure  
vessels, and associated pressure piping in Kentucky.] KRS  
236.097 establishes[requires] criteria and fees for the issuance of  
owner facility, owner's piping inspector, and independent  
inspection agency licenses, and requires[authorizes][requires]  
the department to develop the applications required for the  
issuance and renewal of these licenses. This administrative  
regulation establishes the fees, standards, and forms incident to  
the licensing of boiler and pressure vessel contractors, owner  
facilities, owner's piping inspectors, and independent inspection  
agencies.

Section 1. Boiler and Pressure Vessel Contractors. (1) Application. [A boiler and pressure vessel contractor required by  
KRS 236.210 to be licensed shall comply with the requirements of  
this section.]

(2) An applicant for an initial[a] boiler and pressure vessel  
contractor license shall submit to the department[Boiler Inspection  
Section]:

(a) Proof that the applicant is eighteen (18) years of age or  
older;

(b) A completed[, signed, and notarized] Boiler and Pressure  
Vessel Contractor License Application on Form PLB-BPV-1;

(c) A passport-sized[, ] color photograph of the applicant taken  
within the past six (6) months; and

(d) A nonrefundable license fee of \$250 payable to the  
Kentucky State Treasurer. If an initial license is for a period of less  
than twelve (12) months, the initial license fee shall be reduced on  
a pro rata basis. The initial license fee shall not be prorated for less  
than seven (7) months.

(2) Examination. [(3)](a) An applicant for a boiler and pressure  
vessel contractor license shall take and pass the examination  
required by KRS 236.210 before an initial license may be issued  
under this section.

(b) The applicant shall successfully complete the examination  
with a passing score of at least seventy (70) percent.

(c) A passing score on the examination shall be valid for a  
period of three (3) years[ten (10) years]. [(4)](a) A boiler and  
pressure vessel contractor license shall expire on the last day of  
the licensee's birth month unless renewed in accordance with

subsection (6) of this section.

(b) If an initial license is for a period of less than twelve (12)  
months, the initial application and testing fee shall be reduced on a  
pro rata basis.

(c) The initial license fee shall not be prorated for less than  
seven (7) months.]

[(3)](5) Termination of an application.

(a) The initial application shall remain pending until all  
requirements are met or[,] for a period of up to one (1) year after  
the date the application is submitted to the department[, in order to  
afford the applicant additional time to satisfy the requirements of  
subsections (2) and (3) of this section.]

(b) At the end of one (1) year, the application shall be void.

[(4)](6) License Renewal.

(a) A boiler and pressure vessel contractor license shall expire  
annually on the last day of the licensee's birth month unless  
renewed in accordance with this subsection. [Renewal of a license  
issued under this section shall be renewed on or before the  
expiration date of the license.]

(b) An applicant for renewal of a boiler and pressure vessel  
contractor license shall submit to the department on or before the  
expiration of the license[Boiler Inspection Section]:

1. A completed[, signed, and notarized] Boiler and Pressure  
Vessel Contractor License[Renewal] Application on Form PLB-  
BPV-1[Form PLB-BPV-2]; and

2. A nonrefundable annual renewal fee of \$175 payable to the  
Kentucky State Treasurer.

(5) Representation.

[(a)](7) A boiler or pressure vessel contractor shall provide  
general supervision to and be primarily responsible for all work  
performed by the licensee's employees.

(b) A company or individual may engage in the business of  
installing, erecting, or repairing boilers, pressure vessels, or  
pressure piping within the Commonwealth if one person connected  
with such a company or individual responsible for the boiler,  
pressure vessel, or pressure piping work is a boiler and pressure  
vessel contractor.

(c) Any boiler and pressure vessel contractor, responsible for  
the boiler, pressure vessel, or pressure piping work for a company  
or individual engaged in the boiler, pressure vessel, or pressure  
piping business, shall notify the department at any time he[or she]  
commences or severs his[or her] connection with the company or  
individual.

(d) A boiler and pressure vessel contractor shall only represent  
one (1) company or individual at a time. [(8) A boiler or pressure  
vessel contractor who is an employee of a company and whose  
license represents the company shall, within thirty (30) days of the  
occurrence, provide written notice to the department of:

(a) The termination of the licensee's employment by or  
representation of the company; or

(b) Any change in the name of the company].

Section 2. Owner Facilities. (1) Application. [An owner facility  
seeking to be licensed pursuant to KRS 236.210(1) shall comply  
with the requirements of this section.]

(2) An applicant for an owner facility license shall submit to the  
department[Boiler Inspection Section]:

(a) A completed[, signed, and notarized] Owner Facility  
License Application on Form PLB-BPV-2[Form PLB-BPV-3]; and]

(b) The fee required by KRS 236.097(1)(d), payable to the  
Kentucky State Treasurer. [.]

(c) Proof of employee or contractor who holds a license  
pursuant to under] KRS 236.210; and

(d) Proof that the facility has general liability insurance through  
a company permitted to transact insurance in Kentucky.

(2) License Renewal.

[(a)](3) An owner facility license shall expire after a period of  
two (2) years, on the last day of the month in which the license was  
initially issued, unless renewed in accordance with this  
subsection[(4) of this section].

[(b)](4) License Renewal. (a) An applicant for renewal of an  
owner facility license issued in accordance with this section shall,  
by no later than sixty (60) days prior to the expiration of the license,



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submit to the ~~department~~[Boiler Inspection Section]:

1.[(a)] A completed[, signed, and notarized] Owner Facility License[Renewal] Application on Form PLB-BPV-2[~~Form PLB-BPV-4~~]; and

2.[(b)] The fee required by KRS 236.097(1)(f), payable to the Kentucky State Treasurer.

~~(3) Inspection prohibition. [(5) An owner facility licensed under this section shall be permitted to conduct that owner facility's own site piping inspections, other than for boiler external piping, in lieu of an inspection by the department, in accordance with KRS 236.097 and this administrative regulation.~~

~~(6)] An owner facility shall not conduct, or allow to be conducted, any piping inspections under the owner facility's license unless the inspector performing the inspection is licensed pursuant to [either] Section 3 or Section 4 of this administrative regulation.~~

Section 3. Owner's Piping Inspectors. (1) ~~Application.~~[An owner's piping inspector required to be licensed pursuant to KRS 236.210(2) shall comply with the requirements of this section.]

(2)] An applicant for an initial owner's piping inspector license shall submit to the ~~department~~[Boiler Inspection Section]:

(a) Proof that the applicant is eighteen (18) years of age or older;

(b) A completed[, signed, and notarized] Owner's Piping Inspector License Application on Form PLB-BPV-3[~~Form PLB-BPV-5~~];

(c) A passport-sized[, ] color photograph of the applicant taken within the past six (6) months; and

(d) The nonrefundable fee required by KRS 236.097(2)(c), payable to the Kentucky State Treasurer. If an initial license is for a period of less than twenty-four (24) months, the initial license fee shall be prorated in accordance with KRS 236.097(2)(d).

~~(2) [(3)(a) An owner's piping inspector license shall expire on the last day of the licensee's birth month in the second year following the issue date unless renewed in accordance with subsection (4) of this section.~~

~~(b) If an initial license is for a period of less than twenty-four (24) months, the initial license fee shall be prorated in accordance with KRS 236.097(2)(d).~~

~~(4)] License renewal.~~

~~(a) An owner's piping inspector license shall expire on the last day of the licensee's birth month in the second year following the issue date.~~

~~(b) An applicant for renewal of an owner's piping inspector license [issued in accordance with this section] shall, on or before the expiration of the license, submit to the department [Boiler Inspection Section]:~~

1.[(a)] A completed[, signed, and notarized] Owner's Piping Inspector License[Renewal] Application on Form PLB-BPV-3[~~Form PLB-BPV-6~~]; and

2.[(b)] The fee required by KRS 236.097(2)(f), payable to the Kentucky State Treasurer.

Section 4. Independent Inspection Agencies. (1) ~~Application.~~[An independent inspection agency required to be licensed pursuant to KRS 236.210(3) shall comply with the requirements of this section.]

(2)] An applicant for an initial independent inspection agency license shall submit to the ~~department~~[Boiler Inspection Section]:

(a) A completed[, signed, and notarized] Independent Inspection Agency License Application on Form PLB-BPV-4[~~Form PLB-BPV-7~~]; and

(b) The fee required by KRS 236.097(3)(b), payable to the Kentucky State Treasurer.

~~(2) [(3) An independent inspection agency license shall expire after a period of two (2) years, on the last day of the month in which the license was initially issued, unless renewed in accordance with subsection (4) of this section.~~

~~(4)] License renewal.~~

~~(a) An independent inspection agency license shall expire after a period of two (2) years, on the last day of the month in which the license was initially issued.~~

~~(b) An applicant for renewal of an independent inspection~~

~~agency license [issued in accordance with this section] shall, on or before the expiration of the license, submit to the department [Boiler Inspection Section]:~~

1.[(a)] A completed[, signed, and notarized] Independent Inspection Agency License[Renewal] Application on Form PLB-BPV-4[~~Form PLB-BPV-8~~]; and

2.[(b)] The fee required by KRS 236.097(3)(e), payable to the Kentucky State Treasurer.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PLB-BPV-1, "Boiler and Pressure Vessel Contractor License Application", ~~November 2018~~[~~August 2018~~][December 2014];

(b) Form PLB-BPV-2, ["Boiler and Pressure Vessel Contractor Renewal Application", December 2014];

(c) Form PLB-BPV-3, "Owner Facility License Application", ~~November 2018~~[~~August 2018~~][December 2014];

(d) Form PLB-BPV-3[(d) Form PLB-BPV-4, "Owner Facility Renewal Application", December 2014];

(e) Form PLB-BPV-5, "Owner's Piping Inspector License Application", ~~November 2018~~[~~August 2018~~][December 2014]; and

(f) Form PLB-BPV-4[(f) Form PLB-BPV-6, "Owner's Piping Inspector Renewal Application", December 2014];

(g) Form PLB-BPV-7, "Independent Inspection Agency License Application", ~~November 2018~~[~~August 2018~~][December 2014]; and

(h) Form PLB-BPV-8, "Independent Inspection Agency Renewal Application", December 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~Department~~[Office] of Housing, Buildings and Construction, Boiler Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(As Amended at ARRS, November 13, 2018)**

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

RELATES TO: KRS 318.010, 318.020, 318.030, 318.040, 318.050, 318.054, 318.060, 318.080

STATUTORY AUTHORITY: KRS 318.040(1)(d), (2), (3), 318.050, 318.054(3), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.040(1)(d) authorizes the commissioner[~~of the Kentucky Department of Housing, Buildings and Construction~~] to promulgate administrative regulations establishing qualifications for a master plumber's license and a[~~or~~] journeyman plumber's license. KRS 318.040(2) and (3) require the department to promulgate administrative regulations establishing examination requirements. KRS 318.050 requires the department to establish reasonable application fees for licensure as a master plumber or journeyman plumber. KRS 318.054(3) requires the department to establish reasonable renewal fees for master plumbers and[~~or~~] journeyman plumbers. This administrative regulation establishes

the application, and examination, and renewal requirements for master plumbers and journeyman plumbers and the application and renewal fees].

Section 1. License Requirements. (1) Master plumber. An applicant seeking a master plumber license shall meet the following requirements:

(a) The applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application, and be actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

2. An engineer license in Kentucky sufficiently experienced in mechanical engineering. The sufficiency of experience shall be determined based upon the number and complexity of the applicant's past mechanical engineer projects; and

(b) Apply for and successfully complete the master plumber examination pursuant to Section 2 of this administrative regulation with a passing score of eighty (80) percent, with a minimum of seventy five (75) percent obtained for each portion of the examination.

(2) Journeyman plumber. An applicant seeking a journeyman plumber license shall meet the following requirements:

(a) At least two (2) consecutive years of experience as an apprentice plumber demonstrated by the submission of:

1. A W-2 form;

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

3. A plumbing license issued by another state; or

(b) Complete a department approved course and at least one (1) year of experience as an apprentice plumber; and

(c) Apply for and successfully complete the journeyman plumber examination pursuant to Section 2 of this administrative regulation with a passing score of seventy five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination.

(3) License fees.

(a) The master plumber license fee shall be \$250.

(b) The journeyman plumber license fee shall be sixty (60) dollars.

(c) The initial license fee for a master plumber or a journeyman plumber may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

Section 2. Examinations. (1) Examination applications.

(a) Master plumber examination application. An applicant for examination for a master plumber's license shall submit to the department:

1. A completed Application for License as a Master Plumber, Form PLB-1;

2. An examination fee of \$150; and

3. A passport-sized color photograph of the applicant taken within the past six (6) months.

(b) Journeyman plumber examination application. An applicant for examination for a journeyman plumber license shall submit to the department:

1. A completed Application for License as a Journeyman Plumber, Form PLB-2;

2. An examination fee of fifty (50) dollars; and

3. A passport-sized color photograph of the applicant taken within the past six (6) months.

(2) Examination design.

(a) The examination requirements shall be designed by the State Plumbing Examining Committee.

(b) The examination requirements shall be more complex for the master plumber's license examination than the journeyman plumber's license examination.

(c) The master plumber examination shall include:

1. Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20; and

2. Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures

connected thereto.

a. The proper sizing of main stacks shall be given more importance than other piping.

b. Deductions shall be required for oversized piping and for undersized piping.

(d) The journeyman plumber examination shall include:

1. Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;

2. Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.

a. The proper sizing of main stacks shall be given more importance than other piping.

b. Deductions shall be required for oversized piping and for undersized piping; and

3. Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as making proper connections of various plumbing materials.

(3) Examination materials.

(a) An applicant for a journeyman plumber's license examination shall furnish the plumbing materials required for the practical examination.

(b) The department shall notify the applicant at least one (1) week prior to the date of examination as to what plumbing materials are needed.

(4) Examination schedule.

(a) Regular examination of applicants for a master plumber's license or a journeyman plumber's license shall be conducted yearly during the months of February, May, August, and November.

(b) A special examination may be conducted during other times of a year as the department directs.

(c) Notice of the time and place of examination shall be given by the department at least one (1) week prior to the date of examination to each person who has an approved application on file.

(5) Examination retakes.

(a) An applicant who fails to attend or successfully complete an examination for which he ~~or she~~ has been scheduled may request to reschedule or retake the examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) paragraph (c) of this section. An applicant shall not resubmit the requirements in subsection 1 of this section.

(b) An applicant for a journeyman plumber's license who passes the written portion, the drawing portion, or the practical portion of the examination, but not all portions, may apply to retake the portion that he ~~or she~~ failed within one (1) year from the date of the applicant's first notice of examination.

(c) An applicant for a journeyman plumber's license who failed to achieve a passing score on the retaken portion of the examination may apply to retake the failed portion of the examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination.

(d) 1. An application for a master plumber's or journeyman plumber's license shall be void if the applicant fails to successfully complete his ~~or her~~ examination within one (1) year from the date of the applicant's first notice of examination.

2. An applicant whose application has become void pursuant to this subsection may reapply as if the applicant was a first-time applicant.

(e) An applicant must pay the full examination fee for a retake of any portion of the examination, regardless of whether the applicant is taking less than the whole examination.

Section 3. License Renewals. (1) Filing for renewal. A master plumber and a journeyman plumber shall submit to the department:

(a) The applicable renewal fee made payable to the Kentucky State Treasurer of:

1. \$250 for a master plumber; or

2. Sixty (60) dollars for a journeyman plumber;

(b) Proof of completing the continuing education requirements established in 815 KAR 2:010; and

(c) Proof of insurance as required by KRS 318.030 for a master plumber.

(2) Inactive license renewals.

(a) To place a plumbing license in inactive status:

1. A master plumber shall pay an initial inactive fee of \$125;

2. A journeyman plumber shall pay an initial inactive fee of thirty (30) dollars.

(b) 1. An inactive master plumber shall not secure a plumbing permit, advertise, represent himself~~[or herself]~~ as a qualified master plumber, or otherwise engage in the work of a master plumber.

2. An inactive journeyman plumber shall not represent himself~~[or herself]~~ as a qualified journeyman plumber or otherwise engage in the work of a journeyman plumber.

(c) To reactivate a plumbing license, the inactive licensed plumber shall:

1. Pay an additional reactivation fee;

a. \$125 for a master plumber; or

b. Thirty (30) dollars for a journeyman plumber;

2. Provide proof of insurance as required by KRS 318.030 for a master plumber; and

3. Comply with the continuing education requirements established in 815 KAR 2:010.

Section 4. Change of information. (1) A master plumber or journeyman plumber shall notify the department of any change to the name of the plumber's business and its address, employer, and the employer's address each time a change of employment is made.

(2) Death of a master plumber.

(a) If the master plumber representing a company dies, the company shall notify the department within ten (10) days of the master plumber's death.

(b) The 180 day interim period ~~established~~[described] in KRS 318.054 shall begin on the date the master plumber dies.

(c) The company shall not be required to renew the deceased's master plumber license, if the license renewal date falls within the 180 day interim period.

(d) The company shall not use the deceased master plumber's license after the expiration date of the interim period.

(e) The company shall notify the department when the company has a replacement master plumber to represent the company on or before the expiration date of the interim period.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License as a Master Plumber", Form PLB-1, ~~November 2018~~[June 2018]; and

(b) "Application for License as a Journeyman Plumber", Form PLB-2, ~~November 2018~~[June 2018].

(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 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>. [Applications for Examination for Master or Journeyman Plumber's Licenses. (1) An application for examination for a master or journeyman plumber's license shall be submitted to the department of Housing, Buildings and Construction on:

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

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

(2) The application shall:

(a) Be properly signed and notarized;

(b) Be accompanied by an examination fee of:

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

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

(c) Include a passport-sized, color photograph of the applicant taken within the past six (6) months.

(3) The application fee shall be submitted with the application.

(4) The application fee shall be paid by United States coin and currency, post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

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

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

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants.

(a) Regular examination of applicants for a master or journeyman plumber's license shall be conducted during the months of February, May, August, and November of each year.

(b) A special examination may be conducted at other times as the Department of Housing, Buildings and Construction directs.

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

(3) An applicant who fails to attend or successfully complete an examination for which he or she has been scheduled may request to reschedule or retake the examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section. The requirements established in paragraphs (a) through (d) of this subsection shall apply to a rescheduled examination.

(a) The applicant shall complete and submit a new application form and examination fee as required by Section 1 of this administrative regulation. An applicant proceeding pursuant to this section shall not be required to resubmit:

1. The photograph required by Section 1(2)(c) of this administrative regulation; or

2. Proof of compliance with Sections 4 or 5 of this administrative regulation.

(b) An applicant for a journeyman plumber's license who has achieved a passing score on only the written or practical portion of the examination, but not both portions, may apply to retake the portion that he or she failed during the initial examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section.

(c) An applicant for a journeyman plumber's license who has failed to achieve a passing score on the retaken portion of the examination may apply to retake the entire examination if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section.

(d) The application of an applicant for a master or journeyman plumber's license who fails to successfully complete his or her examination within one (1) year from the date of the applicant's first notice of examination as established in subsection (2) of this section shall be void.

1. An applicant whose application has become void pursuant to this subsection may reapply.

2. Reapplication shall be accomplished by complying with this administrative regulation as if the applicant were a first-time applicant.

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

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

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

(a) \$250 for a master plumber; and

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

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

(3) Inactive master renewal.

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

~~(b) An inactive master plumber shall not secure a plumbing permit, advertise, represent himself or herself as a qualified master plumber, or otherwise engage in the work of a master plumber.~~

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

~~(4) Inactive journeyman renewal.~~

~~(a) To place or keep a journeyman plumber's license in inactive status, the journeyman plumber shall pay annually an inactive fee of thirty (30) dollars.~~

~~(b) An inactive journeyman plumber shall not represent himself or herself as a qualified journeyman plumber or otherwise engage in the work of a journeyman plumber.~~

~~(c) To reactivate a journeyman plumber's license, the inactive journeyman plumber shall first pay an additional thirty (30) dollars and comply with the continuing education requirements established in 815 KAR 20:032.~~

~~(5) Remittance of renewal fees. The renewal fee shall be paid by United States coin and currency, post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.~~

~~Section 4. Requirements for Master Plumber Applicants. Pursuant to KRS 318.040(1)(d), each person shall meet the requirements established in subsections (1) through (4) of this section to become licensed as a master plumber.~~

~~(1)(a) An applicant shall have:~~

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

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

~~(b) The applicant shall be a Kentucky licensed engineer sufficiently experienced in mechanical engineering. The sufficiency of experience shall be determined based upon the number and complexity of the applicant's past mechanical engineering projects.~~

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

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

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

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

~~(3) The examination shall include:~~

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

~~(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.~~

~~1. The proper sizing of main stacks shall be given more importance than other piping.~~

~~2. Deductions shall be required for oversized piping and for undersized piping.~~

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

~~Section 5. Requirements for Journeyman Plumber Applicants. Pursuant to KRS 318.040(1)(d), an applicant shall meet the requirements established in subsections (1) through (3) of this section to become licensed as a journeyman plumber. (1) An applicant shall have completed two (2) consecutive years experience as an apprentice plumber.~~

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

~~1. A W-2 form;~~

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

~~3. A plumbing license issued by another state.~~

~~(b) Completion of a committee approved course shall be the equivalent of one (1) year of experience. An applicant may only substitute one (1) year of experience if the applicant completes a committee approved course.~~

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

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

~~(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.~~

~~1. The proper sizing of main stacks shall be given more importance than other piping.~~

~~2. Deductions shall be required for oversized piping and for undersized piping; and~~

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

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

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

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

~~(a) Form PLB-1, "Application for License as a Master Plumber", August 2014; and~~

~~(b) Form PLB-2, "Application for License as a Journeyman Plumber", August 2014.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Housing, Buildings and Construction  
Building Code Enforcement, Manufactured Housing Section  
(As Amended at ARRS, November 13, 2018)**

**815 KAR 25:001. Definitions for 815 KAR Chapter 25.**

RELATES TO: KRS Chapter 227.550 - 227.665

STATUTORY AUTHORITY: KRS 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the department to establish and enforce administrative regulations reasonably required to effectuate the provisions of KRS 227.550 to 227.660. This administrative regulation establishes definitions for terms found in 815 KAR Chapter 25.

Section 1. Definitions. (1) "Alteration or conversion" means the



replacement, addition, modification, or removal of any equipment or installations that may affect the following:

- (a) The body and frame design and construction; or
- (b) The plumbing, heat-producing, cooling, fuel burning, electrical, or fire and life safety systems.

(2) "ANSI" is defined by KRS 227.550(13).

(3) "B1 seal" and "B2 Seal" are defined by KRS 227.550(2).

(4) "Certificate of acceptability" means the certificate provided to the manufacturer by the department signifying the manufacturer's ability to manufacture, import, and sell manufactured homes or recreational vehicles within the state to retailers.

(5) "Certified installer" means an individual certified [in accordance with 815 KAR 25:060] to install manufactured homes and mobile homes in Kentucky.

(6) "Certified installer seal" means a seal indicating that a manufactured home or mobile home has been installed by a certified installer.

(7) "DAPIA" means the Design Approval Primary Inspection Agency as used in 24 C.F.R. Part 3282.

(8) "Department" is defined by KRS 227.550(10).

(9) "Established place of business" is defined by KRS 227.550(4)[227.550(5)].

(10) "Federal act" is defined by KRS 227.550(5)[227.550(4)].

(11) "Frost line depth" means the minimum frost-protection depth for Kentucky as provided in Section R403 of the Kentucky Residential Code, incorporated by reference in 815 KAR 7:125[Section R403].

(12) "Hard surface lot" means an area open to the public during business hours with a surface of concrete, asphalt, macadam, compacted gravel, stone, or other material of similar characteristics.

(13) "Installation" means the work performed by a certified installer on-site and the operations involved in the permanent securing and placement of a manufactured home or mobile home for the purpose of human occupancy.

(a) "Installation" includes:

- 1. Preparation of a permanent foundation;
- 2. Placement of polyvinyl covering on the ground, if applicable;
- 3. Placement and connection of utilities performed by appropriately licensed contractors;
- 4. Anchoring and tying down;
- 5. Installation of any other accessory or appurtenance specified in the sales contract; and
- 6. All activities within the scope of 24 C.F.R. Part 3285, the Department of Housing and Urban Development's Model Manufactured Home Installation Standards for new manufactured home installations.

(b) "Installation" does not include site preparation.

(14) "Manufactured home" is defined by KRS 227.550(6).

(15) "Manufacturer" is defined by KRS 227.550(8).

(16) "Mobile home" is defined by KRS 227.550(9).

(17) "NFPA" means the National Fire Protection Association.

(18) "Offer for sale" means to:

(a) Display, exhibit, sell, transfer, exchange, or otherwise advertise a manufactured home, mobile home, or recreational vehicle; or

(b) Negotiate the purchase, sale, or exchange of a manufactured home, mobile home, or recreation vehicle for a fee, commission, or other valuable consideration.

(19) "Permanent foundation" means a system of supports capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure.

(20) "Recreational vehicle" is defined by KRS 227.550(11).

(21) "Red tag" means a written notice that is applied to a manufactured home, mobile home, or recreational vehicle by a representative of the department signifying that the manufactured home, mobile home, or recreational vehicle needs repairs or the appropriate seal has not been applied.

(22) "Registration" means the transfer of title or other official recording of change of ownership.

(23) "Retailer" is defined by KRS 227.550(3).

(24) "Salvage unit" means any used manufactured home,

mobile home, or recreational vehicle that is not approved for human habitation.

(25) "Site preparation" means work performed on the land in preparation for installation of a home.

(a) "Site preparation" Includes:

- 1. Clearing and initial grading;
- 2. Water drainage; and
- 3. Vegetation control; and

(b) "Site preparation" does not include final grading after the home has been set.

(26) "State inspector" means a manufactured housing and recreational vehicle inspector employed by the department.

(27) "Suitable sign" means a permanently erected sign with the dealership name and type of dealership in letters at least six (6) inches high and at least one and one-half (1 1/2) inches wide.

(28) "Unlicensed retailer" means any person, firm, or corporation that sells or offers for sale a manufactured home or mobile home but is not a licensed retailer or is exempt from the definition of a retailer.

(29) "Used home" means a manufactured or mobile home offered for sale or sold after the original purchase.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

#### PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction  
Building Code Enforcement, Manufactured Housing Section  
(As Amended at ARRS, November 13, 2018)

#### 815 KAR 25:020. Recreational vehicles.

RELATES TO: KRS 227.550 - 227.665[227.660]

STATUTORY AUTHORITY: KRS 227.570, [227.580,] 227.590, [227.610,] 227.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590(1) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations reasonably necessary to effectuate KRS 227.550 to 227.660 and carry out the department's responsibility as a state administrative agency. KRS 227.570(1)(a) requires the department to promulgate administrative regulations establishing a process for licensing retailers and issuing certificates of acceptability to qualifying manufacturers. KRS 227.620(2) requires the department to promulgate administrative regulations establishing application and fee requirements for a retailer's license. KRS 227.620(4)(a) requires the department to establish fees for a retailer's license, a manufacturer's "certificate of acceptability," and "Class B," "Class B1," and "Class B2" seals, in accordance with KRS 227.620(4)(a), 1. to 4. This administrative regulation establishes the requirements for retailers to obtain a license to sell recreational vehicles and the standards for issuing a certificate of acceptability to manufacturers of recreational vehicles.[227.590 requires the department to establish administrative regulations governing the standards for the manufacture, sale, and alteration of recreational vehicles. KRS 227.570 requires the department to inspect and enforce the utility and safety systems of used recreational vehicles. KRS 227.580 requires a manufacturer to submit systems for quality control of recreational vehicles and the department to issue a certificate of acceptability upon approval of these systems. KRS 227.610 and 227.620 establish the requirements for the licensing of retailers. This administrative regulation establishes the requirements for retailers to obtain a license to sell recreational vehicles and the standards for certification



of manufacturers of recreational vehicles.]

Section 1. Standard for Recreational Vehicles. (1) All recreational vehicles manufactured for sale within the Commonwealth of Kentucky shall comply with the applicable standards set forth in the NFPA 1192 Standard on Recreational Vehicles.

Section 2. Licensed Retailers. (1) Application. An applicant for a recreational vehicle retailer license shall submit to the department:

(a) A completed Form HBC RV-2 Recreational Vehicle Retailer Application;

(b) A fee in the amount of \$200 for one (1) full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer; and

(c) Proof of liability insurance naming the department as the certificate holder in the minimum amount of at least:

1. \$200,000 bodily injury or death for each person;
2. \$300,000 bodily injury or death for each accident; and
3. \$100,000 property damage.

(2) Application review period. All licenses shall be granted or denied in accordance with KRS 227.620(3) within thirty (30) days after receipt of the application.

(3) Certified Retailer. A licensed retailer may complete inspections for the public if the retailer qualifies as a certified retailer.

(a) An applicant to become a certified retailer shall complete and submit to the department Form HBC MH/RV-2 Request for Approval to Inspect.

(b) A certified retailer shall not:

1. Perform negligent inspections or repairs on a unit; or
2. Apply the wrong seal to a unit.

(4) Out-of-state retailers. To inspect and apply Kentucky seals for used recreational vehicles that are sold by out-of-state retailers for delivery into Kentucky, an out-of-state retailer shall be a Kentucky certified retailer.

(5) Periodic reports.

(a) A retailer shall maintain a record of all new or used units sold to include the following:

1. Serial numbers;
2. B seal numbers;
3. Date manufactured;
4. Make of recreational vehicle; and
5. The name and address of the purchaser.

(b) The retailer shall make the report available to any department employee upon request.

Section 3. Certificate of Acceptability. (1) Certificate of acceptability requirement. A manufacturer shall not manufacture, import, or sell any recreational vehicle in the Commonwealth unless the manufacturer has received a certificate of acceptability issued by the department.

(2) Requirements for issuance. An applicant for a certificate of acceptability shall submit to the department:

(a) A completed Form HBC MH/RV-1 Application of Certificate of Acceptability;

(b) Its in-plant quality control systems;

(c) An affidavit certifying compliance with the applicable standards, such as NFPA 1192 as adopted through REVA;

(d) A \$500 certification of acceptability fee for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, by check or money order, made payable to the Kentucky State Treasurer; and

(e) Proof of general liability insurance to include lot and completed operations insurance in the minimum amount of at least:

1. \$300,000 bodily injury or death for each person;
2. \$400,000 bodily injury or death for each accident; and
3. \$100,000 property damage.

(3) In-plant quality control. To obtain in-plant quality control approval, a manufacturer shall submit to an inspection by the department for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall

contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches, and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches.

(b) The manufacturer shall certify that the systems comply with:

1. NFPA 1192 Standards on Recreational Vehicles; or
2. ANSI A119.5 Park Trailers.

(c) A copy of the procedure that directs the manufacturer to construct recreational vehicles in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection.
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) Manufacturer and retailer. If the manufacturer is also a retailer, the manufacturer shall comply with retailer licensing provisions pursuant to Section 1 of this administrative regulation.

(5) Trade show. A certificate of acceptability shall not be required for manufacturers attending a recreational vehicle trade show within the Commonwealth of Kentucky if they do not sell recreational vehicles to Kentucky licensed retailers.

(6) Incorrect or Incomplete applications.

(a) If the department receives an incorrect or incomplete application, the department shall issue a correction notice specifying the defect to the applicant within thirty (30) days of receiving the application. If no corrected application is filed within thirty (30) days, the department shall deem the application abandoned and the fee forfeited.~~;~~

(b) A corrected application submitted after the thirty (30) day period shall be processed as a new application.

~~(7)(8)~~ Proprietary information.

(a) The manufacturer shall label as proprietary any information relating to building systems or in-plant quality control systems that the manufacturer considers proprietary.

(b) The department, the inspection and evaluation personnel, and local enforcement agencies shall maintain and treat the designated information as proprietary unless the department determines that disclosure is necessary to carry out the purposes of KRS 227.550 through KRS 227.665 and 815 KAR Chapter 25.

~~(8)(9)~~ Alternative standards. A manufacturer may submit alternative standard for recreational vehicles established by another state, federal government, or other independent third party for review by the department. If the department finds that the alternative standard for recreational vehicles is applicable to the standard adopted by this administrative regulation, then a certificate of accessibility shall be issued for those recreational vehicles.

Section 4. License and Certificate Renewals. (1) Expiration of a license and certificate. A license and a certificate of acceptability shall expire on:

(a) For individuals, the last day of the licensee's or certificate holder's birth month in the following year; or

(b) For business entities:

1. The licensee's or certificate holder's month of incorporation in the following year; or
2. The last day of the birth month of the principal officer of the firm.

(2) Renewal procedure. A retailer and a manufacturer holding a certificate of acceptability wishing to renew a license or certificate shall submit to the department:

(a) A completed Form HBC MH/RV-3 License and Certification Renewal Application;

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- (b) Proof of continuing general liability insurance coverage; and
- (c) A check or money order for the annual license fee payable to the Kentucky State Treasurer, in the amount of:
  - 1. \$200 for a licensed retailer; or
  - 2. \$500 for a certificate of acceptability.

Section 5. Recreational Vehicles in Manufacturers' or Retailers' Possession. (1) Used recreational vehicle inspection.

(a) Prior to the offering for sale of any used recreational vehicle, or a recreational vehicle taken in trade, the retailer shall first certify that the electric, heating, plumbing, and fire and life safety systems are in a safe working condition.

(b) The retailer shall make any necessary repairs prior to offering the recreational vehicle for sale.

(c) The retailer shall affix a B seal to the recreational vehicle once any repairs have been made.

(d) If a seal is on the recreational vehicle prior to the inspection, the existing seal shall be removed and a new B seal placed on the recreational vehicle.

(2) Salvage units.

(a) A B2 seal shall be required if the retailer submits to the department an affidavit that the unit is a salvage unit.

(b) A salvage unit shall not be sold until it has been authorized, in writing, by the department to be labeled "salvage only" and the label has been affixed to the unit by the retailer.

(3) Sales between retailers.

(a) No seal shall be required if one (1) licensed retailer sells any unit to another licensed retailer.

(b) The retailer selling the unit shall submit prior notice of the sale to the department.

(4) All used recreational vehicles purchased outside the Commonwealth not bearing a Kentucky B seal shall be inspected as a used recreational vehicle by a certified retailer or the department.

(5)(a) A recreational vehicle that is not in compliance with the requirements of this administrative regulation shall be:

- 1. Corrected prior to the retailer certifying the recreational vehicle or offering the recreational vehicle for sale; or
- 2. Classified as a salvage unit and issued a salvage label in accordance with this administrative regulation.

(b) All recreational vehicles requiring repairs or corrections prior to recreational vehicle certification shall be reported to the department specifying the repairs required to correct the deficiencies.

(6) A retailer shall submit a completed Form HBC RV-7 Recreational Vehicle Unit Certification Format to the department no later than the first week of each month.

(7) Fees for inspections. The fees for the inspection of recreational vehicles shall be:

(a) If performed by a certified retailer:

- 1. Twenty (20) dollars per hour;
- 2. Twenty-two (22) cents per mile, measured from the place of the certified retailer's place of business; and
- 3. Twenty-five (25) dollars for the seal.

(b) If performed by the department:

- 1. Thirty-five (35) dollars; and
- 2. Twenty-five (25) dollars for the seal.

Section 6. Serial Numbers, Model Numbers, and Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the tongue or front cross member of the frame at the lower left hand side (while facing the unit) and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 7. Change of Information. (1) Manufacturers or retailers shall notify the department in writing within thirty (30) days of a change in any of the following:

- (a) The company or corporate name;
- (b) The address of the company;
- (c) Ownership interest of twenty-five (25) percent or more of the company within a twelve (12) month period; or

(d) The principal officers of the company.

(2) Manufacturers shall notify the department in writing within thirty (30) days of a change in any of the following:

(a) The location of any manufacturing facility; or

(b) The location of a new manufacturing facility.

(3) If the business location of a retailer is changed, the department shall reissue the license to reflect the change of location without charge if it is located within the same county. A change of location to another county, which is not adjacent to the initial county, shall require a new license.

Section 8. Temporary Licenses. (1) An unlicensed retailer may offer for sale recreational vehicles within the Commonwealth of Kentucky if the retailer purchases a temporary license from the department.

(2) Temporary license requirements. An out-of-state applicant for a temporary license shall:

(a) Be a duly licensed retailer in a state other than Kentucky;

(b) Furnish to the department proof of liability insurance in the minimum amount of at least:

- 1. \$200,000 bodily injury or death for each person;
- 2. \$300,000 bodily injury or death for each accident; and
- 3. \$100,000 property damage;

(c) Provide **documentation[satisfactory assurance]** to the department ~~[by way]~~ of a physical inspection by an authorized representative of the department that **confirms that a B seal is attached to each new unit** the retailer proposes to display, show, or offer for sale ~~[, bears a B seal]~~;

(d) Submit to the department Form HBC RV-6 Temporary RV Retailer's License;

(e) Provide the department with the name, location and time of the proposed event; ~~[;]~~

(f) Pay by check or money order a temporary license fee of \$100 made payable to the Kentucky State Treasurer; ~~[;]~~

(g) Certify to the department that the event shall comply with the **Kentucky Fire code, 815 KAR 10:060:[applicable fire code requirements]**;

(h) Possess a valid Kentucky sales tax certificate; and

(i) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky retailers.

(3) An application for a temporary license shall be submitted to the department at least thirty (30) days prior to an event at which the retailer intends to offer for sale or sell recreational vehicles.

(4) A retailer shall not be issued more than two (2) temporary licenses per calendar year.

(5) Used recreational vehicles. A temporary license retailer shall not display, show, or offer for sale within the Commonwealth any used recreational vehicles except for used recreational vehicles with a Kentucky seal.

(6) Duration of temporary license. A temporary license shall not exceed fifteen (15) days.

(7) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business. The license shall be valid only for the location stated on the application.

Section 9. Seals. (1) Application for seals. A licensed retailer shall submit to the department the following for B seals:

(a) A completed Form HBC MH-12, Application for Purchasing B Seals; and

(b) A fee of twenty-five (25) dollars for each B Seal requested, payable by check or money order to the Kentucky State Treasurer.

(2) Alteration or conversion of a unit bearing a seal.

(a) Any alteration of the plumbing, heat-producing equipment, electrical equipment installations or fire and life safety in a recreational vehicle which bears a seal, shall void the approval and the seal shall be returned to the department.

(b) The following shall not constitute an alteration or conversion:

- 1. Repairs with approved component parts by the manufacturer;
- 2. Conversion of listed fuel-burning appliances in accordance with the terms of the manufacturer's listing;
- 3. Adjustment and maintenance of equipment;

4. Replacement of equipment in kind; or  
5. Any change that shall not affect those areas regulated by the NFPA 1192.

(c) Any ~~retailer[dealer]~~ proposing an alteration to a recreational vehicle bearing a seal shall apply to the department. The application shall include:

1. Make and model of the recreational vehicle;
2. Serial number;
3. State seal number;
4. A complete description of the work to be performed together with plans and specifications ~~if[when]~~ required; and
5. Location of the recreational vehicle where work is to be performed.

(d) Upon completion of the alteration, the applicant shall request the department to make an inspection.

(e) The applicant shall purchase a replacement seal, based on inspection of the alteration for a fee of twenty-five (25) dollars.

(3) Placement of B seals.

(a) Each B seal shall be assigned and affixed to a specific recreational vehicle.

(b) Assigned B seals shall not be transferable except upon prior approval of the department.

(c) A B seal that is not affixed as assigned shall be void, and the B seal shall be returned to or confiscated by the department.

(d) A B seal shall remain the property of the department and shall be seized by the department ~~if there is[in the event]~~ of a violation of KRS 227.550 to 227.665 or this administrative regulation.

(e) A B seal shall be securely affixed by the door on the handle side at approximately handle height.

(f) No other seal, stamp, cover, or other marking shall be placed within two (2) inches of the B seal.

(4) Lost or damaged seals.

(a) If a B seal becomes lost or damaged, the owner shall immediately notify the department in writing, specifying:

1. The manufacturer;
2. The recreational vehicle serial number; and
3. When possible, the B seal number.

(b) All damaged B seals shall be returned to the department.

(c) Damaged and lost B seals shall be replaced by the department after an inspection and payment of the appropriate fee under Section 3(10).

~~(5)[(4)]~~ Denial and repossession of seals.

(a) If the department discovers that a retailer fails to repair a used recreational vehicle under the standards and procedures set forth in KRS 227.550 to 227.665 and this administrative regulation, or fails to comply with any provision for placement of B seals, the department shall provide notice to the retailer of the violations.

(b) The retailer shall fix the violations, ~~and the retailer shall submit proof to the department that the violations were fixed.~~

(c) If the retailer continues to offer for sale recreational vehicles in violation of KRS 227.550 to 227.665 or this administrative regulation, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated. The department shall reimburse the retailer for the price of the confiscated unused seals.

(d) ~~After the retailer submits proof that the violations have been fixed[Upon satisfactory proof of compliance]~~, the retailer shall resubmit an application for B seals.

~~(6)[(5)]~~ Red Tagging.

(a) If any recreational vehicle bearing a B seal is found to be in violation of KRS 227.550 to 227.665 or this administrative regulation, the department shall attach to the vehicle a red-tag and furnish the retailer a copy of same.

(b) The department, a retailer, or a manufacturer shall not remove the red tag until the necessary corrections have been made and approved by an inspection conducted by the department or a certified retailer.

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

(a) "Form HBC MH/RV-1, Application of Certificate of Acceptability", ~~November[August]~~ 2018;

(b) "Form HBC MH/RV-2, Request for Approval to Inspect", August 2018;

(c) "Form HBC MH/RV-3, License and Certification Renewal Application", ~~November[August]~~ 2018;

(d) "Form RV-2, Recreational Vehicle Retailer Application", ~~November[August]~~ 2018;

(e) "Form HBC RV-6, Temporary RV Retailer's License", August 2018; ~~and~~

(f) "Form HBC MH-12, Application for Purchasing Seals", August 2018;

(g) ~~"Form HBV RV-7, Recreational Vehicle Unit Certification Format", August 2018;~~

(h) ~~"NFPA 1192, Standard on Recreational Vehicles", 2018; and~~

(i) ~~"ANSI A119.5, Park Trailers", 2015.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>. [KRS 227.590 requires the Recreational Vehicle Certification and Licensure Board to establish rules and administrative regulation governing the standards for manufacture, sale, and alteration of recreational vehicles; and the office of the State Fire Marshal is required to license dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. These administrative regulations are intended to assure safety for owners and occupiers of recreational vehicles by regulating dealers, setting standards for construction and inspection. This amendment is necessary to clarify the law and improve the enforcement of safety standards for all recreational vehicles, including a new entity known as park trailers. This amendment was approved by the Recreational Vehicle Board on May 2, 1991.

Section 1. Definitions. For purposes of this administrative regulation the following definitions shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an outside organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which the specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification, or removal of any equipment or installations which may affect the plumbing, heat-producing or electrical systems, and fire and life safety systems or their function, unless excluded by this administrative regulation.

(4) "ANSI" means the American National Standards Institute.

(5) "Board" means the Recreational Vehicle Certification and Licensure Board defined in KRS 227.550(1).

(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell recreational vehicles within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used recreational vehicles which are brought into Kentucky, and repair them, if necessary, under ANSI A119.2/NFPA 501C or ANSI A119.5 before placing a "B" seal upon them.

(8) "Class 'A' seal" as defined by KRS 227.550(2).

(9) "Class 'B' seal" as defined by KRS 227.550(3).

(10) "Dealer" as defined by KRS 227.550(4).

(11) "Established place of business" as defined by KRS

227.550(5).

(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).

(14) "Manufacturer" as defined by KRS 227.550(8).

(15) "Manufactured housing" as defined by KRS 227.550(7).

(16) "NFPA 501(C)" as defined by KRS 227.550(12).

(17) "Office" as defined by KRS 227.550(13).

(18) "Offer for sale" means to display, exhibit or otherwise advertise a recreational vehicle before the general public. It also means negotiating the purchase and sale or exchange of recreational vehicles for a fee, commission, compensation, or other valuable consideration.

(19) "Park trailer" means a recreational vehicle that meets the following criteria:

(a) Built on a single chassis mounted on wheels.

(b) Primarily designed as temporary living quarters for seasonal or destination camping which may be connected to utilities necessary for operation of installed fixtures and appliances.

(c) Having a gross trailer area not exceeding forty (40) square feet in the set-up mode.

(d) Having a gross trailer area not less than 240 square feet and certified by the manufacturer as complying with ANSI A119.5.

(20) "Person" means a person, partnership, corporation or other legal entity.

(21) "Recreational vehicle" as defined by KRS 227.550(14), the HUD Act in 24 C.F.R., Parts 3280, 3282 and 3283, and defined herein as "park trailers."

(22) "Red tag" means a written notice which is applied to a recreational vehicle by a representative of the State Fire Marshal's office in accordance with Section 4 of this administrative regulation signifying that the recreational vehicle is not in compliance with applicable laws.

(23) "Registration" means the transfer of title or any other official recording of change of ownership.

(24) "Salvage unit" means any used recreational vehicle which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(25) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and a minimum width of one and one-half (1 1/2) inches.

Section 2. Authorization. (1) This administrative regulation is authorized to carry out the provisions of law in KRS Chapter 227. If these administrative regulations conflict with the applicable provisions of ANSI A119.2/NFPA 501C, or ANSI A119.5 the codes shall govern in all cases.

(2) Subject to the provisions of applicable law, when it becomes necessary during an inspection to determine compliance, the office may require the dealer or manufacturer to remove or expose a portion of the recreational vehicle in order to make the inspection.

Section 3. Scope and Purpose. These administrative regulations establish licensing requirements for all dealers and govern the design, manufacture, storage, and sale of recreational vehicles which are manufactured, sold, leased, or transported for use within or outside of the Commonwealth. These administrative regulations apply to recreational vehicles manufactured in manufacturing facilities located within or outside the Commonwealth. Recreational vehicles brought into this state for exhibition use only and which shall not be sold in this state, shall be exempt from the coverage of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Vehicles in Manufacturers' or Dealers' Possession. (1) The office shall enforce the standards and requirements for the installation of plumbing, heating, electrical, and fire and life safety systems in recreational vehicles as it determines are reasonably necessary to protect the health and

safety of the occupants and the public.

(2) All recreational vehicles manufactured for sale within the Commonwealth of Kentucky shall comply with the applicable standards set forth in ANSI A119.2/NFPA 501C, Recreational Vehicles, 1990 Edition, or ANSI A119.5, Park Trailers, 1988 Edition, hereby incorporated by reference. Copies of ANSI A119.2/NFPA 501C are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. Copies of ANSI A119.5 are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018. This material is available for public inspection at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday between 8 a.m. and 4:30 p.m.

(3) Prior to the offering for sale of any used recreational vehicle, the dealer shall first certify that the electric, heating, plumbing, and fire and life safety systems have been checked, and repaired if necessary, and found to be in safe working condition and then affix a "B" seal to the unit.

(4) All recreational vehicles taken in trade by a dealer shall be reinspected and certified that they are in compliance with requirements of this subsection and subsection (7) of this section. The existing class "A" or class "B" seal shall be removed and a new seal or label affixed to the unit; or a new seal shall be affixed to the unit over the existing seal or label.

(5) A seal shall be required if the dealer submits to the office an affidavit that the unit is a salvage unit. A salvage unit shall not be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer. No seal shall be required if one (1) licensed dealer sells any unit to another licensed dealer; however, prior notice of the shall be given to the office.

(6) All new recreational vehicles purchased outside the Commonwealth of Kentucky not bearing a class "A" seal of approval and all used recreational vehicles purchased outside the Commonwealth of Kentucky, not bearing any Kentucky seal of approval, shall be inspected by a certified Kentucky dealer or the office and a class "B" seal of approval issued according to the following criteria:

(a) Inspection of the plumbing and waste systems;

(b) Inspection of the heating unit to determine adequacy of the system;

(c) Inspection of the electrical systems including the main circuit box and all outlets/switches to detect any damaged coverings, lost screws, or improper installations;

(d) Inspection of fire and life safety (fire extinguishers and second means of egress).

(7) Any Kentucky licensed recreational vehicle dealer that maintains the capability to perform minor maintenance of plumbing, heating, and electrical systems of recreational vehicles shall be permitted to inspect and certify those recreational vehicles purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service shall make application to the Department of Housing, Buildings and Construction, State Fire Marshal's Office for appropriate certification. Upon application approval, the dealer shall be a "certified Kentucky dealer".

(8) Any unit found to be in noncompliance with the requirements of this administrative regulation shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this administrative regulation. All units requiring repairs or corrections prior to unit certification shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(9) The fee for the inspection of recreational vehicles shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollar inspection fee and twenty-five (25) dollar seal fee.

~~Section 5. Applicability and Interpretation of Code and Regulation Provisions. (1) Any request for interpretations of any provisions of this administrative regulation or the Act may be submitted, in writing, by any interested person to the office. It is the policy of the office that questions regarding ANSI A119.2/NFPA 501C or ANSI A119.5 shall, whenever feasible, be submitted to the NFPA or ANSI for their recommendation. The opinion or decision of the office shall be in writing for written requests.~~

~~Section 6. Certificate of Acceptability. (1) A manufacturer shall not manufacture, import, or sell any recreational vehicle in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Recreational vehicles manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with applicable provisions of ANSI A119.2/NFPA 501C or ANSI A119.5 as required by Section 4(2) of this administrative regulation shall not comply with this provision. A certificate of acceptability shall not be required for manufacturers attending a recreational vehicle trade show within the Commonwealth of Kentucky if they do not sell recreational vehicles to Kentucky dealers.~~

~~(2) Requirements for issuance.~~

~~(a) The manufacturer shall submit and the office shall approve in-plant quality control systems;~~

~~(b) An affidavit certifying compliance with the applicable standards shall be attached to the application;~~

~~(c) A \$500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to: Kentucky State Treasurer;~~

~~(d) The manufacturer shall furnish and maintain with the office a certificate of insurance to certify proof of general liability insurance to include lot and completed operations insurance in the minimum amount of \$300,000 bodily injury or death for each person, \$400,000 bodily injury or death for each accident, and \$100,000 property damage.~~

~~(3) To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:~~

~~(a) A certified copy of the plans and specifications of a model or model-group for electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half (8 1/2) inches by eleven (11) inches, and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers, whichever is applicable.~~

~~(b) Also a copy of the procedure which will direct the manufacturer to construct recreational vehicles in accordance with the plans, specifying:~~

- ~~1. Scope and purpose.~~
- ~~2. Receiving and inspection procedure for basic materials.~~
- ~~3. Material storage and stock rotation procedure.~~
- ~~4. Types and frequency of product inspection.~~
- ~~5. Sample of inspection control form used.~~
- ~~6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.~~
- ~~7. Test equipment.~~
- ~~8. Control of drawings and material specifications.~~
- ~~9. Test procedures.~~

~~(4) A unit certification format certifying compliance with the Act and administrative regulations shall be submitted to the office no later than the end of the first week of each month. The unit certification format shall contain the information in the format in Section 12 of this administrative regulation.~~

~~(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.~~

~~(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.~~

~~(7) If the applicant does not conform with these administrative~~

~~regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as new application.~~

~~(8) Manufacturers shall notify the office in writing within thirty (30) days of any of the following occurrences:~~

~~(a) The corporate name is changed;~~

~~(b) The main address of the company is changed;~~

~~(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;~~

~~(d) The location of any manufacturing facility is changed;~~

~~(e) A new manufacturing facility is established; or~~

~~(f) There are changes in the principal officers of the firm.~~

~~(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.~~

~~(10) The office may determine that the standards for recreational vehicles established by a state or a recognized body or agency of the federal government or other independent third party are at least equal to applicable provisions of ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers, as adopted by this administrative regulation. If the office finds that these standards are actually enforced then it may issue a certificate of acceptability for those recreational vehicles.~~

~~Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.~~

~~Section 8. Licensed Kentucky Dealers. (1) A dealer of recreational vehicles shall not engage in business in this state without a license issued by the office upon application.~~

~~(2) Application shall contain the following information:~~

~~(a) Name and address of the chief managing officer;~~

~~(b) Location of each and every established place of business;~~

~~(c) Social Security number and date of birth of chief managing officer;~~

~~(d) Affidavit certifying compliance with the Act and administrative regulations;~~

~~(e) Names of officers if dealership in corporate form;~~

~~(f) Names of partners if dealership in partnership form;~~

~~(g) A copy of a valid Kentucky sales tax certificate; and~~

~~(h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business.~~

~~(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.~~

~~(4) The license fee shall be \$200. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.~~

~~(5) The license shall be conspicuously displayed at the established place of business. If the business location is changed, the office shall endorse the change of location on the license without charge if it is located within the same municipality. A change of location to another municipality shall require a new license.~~

~~(6) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of \$200,000 bodily injury or death for each~~



person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage.

(7) Periodic reports.

(a) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 13 of this administrative regulation. The report shall be made available to the field inspector on a monthly basis.

(b) Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:

1. Dealership name is changed;
2. Established place of business is changed;
3. There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or
4. There are changes in the principal officers of the firm.

(8) Out-of-state dealers with valid Kentucky license. Exception: an applicant whose place of business is in another state and who possesses a valid dealer's license in another state, shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out-of-state dealers shall certify and provide Kentucky seals only for units actually sold for delivery into Kentucky.

(9) Any dealer duly licensed under subsections (1) through (8) of this section may offer for sale or sell recreational vehicles on a temporary basis at a location outside the municipality for which the dealer is currently licensed under the following conditions:

(a) Written notification to the State Fire Marshal's office thirty (30) days in advance of any event at which the dealer plans to exhibit recreational vehicles, giving name, location and duration of the proposed event and that the dealer shall comply with applicable fire code requirements for the event.

(b) No event exceeds fifteen (15) days in duration.

(c) The dealer complies with applicable temporary licensing requirements of Section 9 of this administrative regulation for authorized events in excess of two (2).

Section 9. Temporary Licenses. (1) A dealer, except one (1) possessing a valid Kentucky license issued pursuant to Section 8 of this administrative regulation shall not offer for sale or sell recreational vehicles within the Commonwealth of Kentucky unless the dealer shall purchase from the Office of the State Fire Marshal a temporary license.

(2) An out-of-state applicant for temporary license shall meet the following requirements before a temporary license shall be granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Furnish to the office a certificate of insurance as proof of liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of the office, that each new unit the dealer proposes to display, show or offer for sale, bears a Kentucky class "A" seal of approval. Used units shall not be displayed, shown or offered for sale within the Commonwealth of Kentucky by any dealer who does not possess a valid Kentucky license issued pursuant to Section 8 of this administrative regulation;

(d) Possess a valid Kentucky sales tax certificate;

(e) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers;

(3) Any temporary license shall not exceed fifteen (15) days duration and the license fee shall be \$100 for each authorized event.

(4) Applications for a temporary license shall be made at least thirty (30) days in advance of any event at which recreational vehicles shall be offered for sale or sold and the application shall state the name, location and time of the proposed event and all dealers shall comply with applicable fire code requirements for the proposed event.

(5) Temporary licenses shall be prominently displayed at the

location where the applicant is transacting business. The license shall be valid only for the location stated on the application.

(6) A dealer shall not be issued more than two (2) temporary licenses per calendar year.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state recreational vehicles unless they bear a class "A" seal of approval issued by and purchased from the office. The provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A dealer who has received a license from the office shall not sell or offer for sale a recreational vehicle except as permitted between licensed dealers pursuant to Section 4(6) of this administrative regulation unless it has an "A", a "B" seal or a "salvage label" affixed to the unit. Any dealer who has acquired a used recreational vehicle without a seal shall apply to the office for a class "B" seal by submitting an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code. Any licensed dealer who has acquired a new recreational vehicle without an "A" seal, shall notify the office and the manufacturer upon discovery. Units without seals affixed shall not be displayed or offered for sale prior to certification by the office or manufacturer.

(a) Acquisition of seals.

1. Any manufacturer, except one altering a new recreational vehicle bearing a seal, shall qualify for acquisition of a class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this administrative regulation.

2. Any dealer, except one altering a recreational vehicle bearing a seal, shall qualify for acquisition for a class "B" seal by giving an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Section 6 or 8 of this administrative regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) dollars for each class "A" seal or twenty-five (25) dollars for each class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the plumbing, heat-producing equipment, electrical equipment installations or fire and life safety in a recreational vehicle which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion:

- a. Repairs with approved component parts;
- b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing;
- c. Adjustment and maintenance of equipment;
- d. Replacement of equipment in kind;
- e. Any change that shall not affect those areas regulated by ANSI A119.2/NFPA 501C, Recreational Vehicles or ANSI A119.5, Park Trailers.

3. Any dealer proposing an alteration to a recreational vehicle bearing a seal shall make application to the office. The application shall include:

- a. Make and model of recreational vehicle;
- b. Serial number;
- c. State seal number;
- d. A complete description of the work to be performed together with plans and specifications when required; and
- e. Location of the recreational vehicle where work is to be performed.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant shall purchase a replacement seal, based on

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inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is not constructing recreational vehicles according to the applicable provisions of ANSI A119.2/NFPA 501C or ANSI A119.5; or, if inspection reveals that any dealer failed to repair a used recreational vehicle under the standards and procedures set forth in this administrative regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of this administrative regulation and the code have been violated, continues to manufacture, sell or offer for sale recreational vehicles in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seals.

(e) Seal removal. If any recreational vehicle bearing the seal is found to be in violation of this administrative regulation or the Act, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance tag or "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office or given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this administrative regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific recreational vehicle. Assigned seals shall not be transferable unless upon prior approval of the office and shall be void when not affixed as assigned, and all seals shall be returned to or shall be confiscated by the office. The seal shall remain the property of the office and shall be seized by the office in the event of violation of the Act or administrative regulation.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking shall be placed within two (2) inches of the seal or label.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the recreational vehicle serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a recreational vehicle unless an "A" seal, a "B" seal or salvage label is affixed to the unit.

Section 11. Effective Date. The effective date of this administrative regulation shall be September 1, 1991.

Section 12. Recreational Vehicle Unit Certification Format.

RECREATIONAL VEHICLE  
UNIT CERTIFICATION FORMAT

Name of Manufacturer:

Mailing Address:

County:

City:

State:

Zip Code

I hereby certify that the recreational vehicles as described hereon have been constructed in compliance with ANSI A119.2/NFPA 501(C) or ANSI A119.5.

NO.	SERIAL #	KY SEAL #	DATE MFG.	MODEL	SIZE	DEALER
-	-	-	-	-	-	-

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the Office of the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

Date: \_\_\_\_\_ By \_\_\_\_\_ (Person Authorized to Certify These Units)

Section 13. Dealer Certification Format.

DEALER CERTIFICATION FORMAT

Name of Dealer:

Mailing Address:

County:

City:

State:

Zip Code:

I hereby certify that the used units described hereon have been inspected, A NEW "B" seals is affixed, and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and administrative regulations thereto and that the new recreational vehicles described hereon have the Kentucky Class "A" seal affixed.

NO.	SERIAL #	KY SEAL #	DATE MFG.	MAKE	PURCHASER & ADDRESS
-	-	-	-	-	-

This form shall be used in reporting units to the Field Inspector.

Date:

Signature: ]

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel,  
Department of Housing, Buildings and Construction, 101 Sea Hero  
Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-  
0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Building Code Enforcement, Manufactured Housing Section**  
**(As Amended at ARRS, November 13, 2018)**

**815 KAR 25:040. Fire safety requirements in manufactured and mobile homes.**

RELATES TO: KRS 219.310 - 219.410, 227.555, 227.590, 227.630[227.590, KRS 219.310-219.410][KRS 227.550-227.665]

STATUTORY AUTHORITY: KRS 227.555, 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the Department of Housing, Buildings and Construction[department] to promulgate administrative regulations governing the manufacture, sale, and alteration of manufactured homes, mobile homes, and recreational vehicles. KRS 227.555 requires the department[Office of Housing, Buildings and Construction] to design and cause to be placed a notice stating the requirements of KRS 227.555(1) and the penalty for noncompliance as set out in KRS 227.555(6); and to cause the notice to be placed at each vehicle entrance to a mobile home community. This administrative regulation establishes requirements for the notice.

Section 1. Notice. (1) Each manufactured home and mobile home community permitted pursuant to KRS 219.310 to 219.410 and each county clerk's office[licensed by the Cabinet for Health and Family Services] shall post Form HBC MH-15[official notice of a homeowner's responsibilities set forth in KRS 227.555(4)].

(2) A permitted manufactured home or mobile home community or a county clerk's office may use a current or previously generated notice as long as the notice:

(a) ~~Sets~~~~[The notice shall set]~~ forth the language contained in KRS 227.555(1) and (5)~~[as required by KRS 227.555(2)(a)]~~; and  
(b) ~~States~~~~[The notice shall also state]~~ that the failure of a homeowner to comply with the requirements shall be a violation ~~[which is]~~ punishable by a fine pursuant to KRS 534.040.~~[(2) The county court clerk shall maintain a typed eleven (11) inch by fourteen (14) inch poster in a conspicuous place in the clerk's office providing the notice required by subsection (1) of this section.]~~

Section 2. Posting Requirements~~[of Notice]~~. (1) Placement.

(a) Form HBC MH-15~~[The notice]~~ shall be permanently posted ~~[outside]~~ at each vehicle entrance to a manufactured home or mobile home community.

(b) The county court clerk shall post Form HBC MH-15 in a conspicuous place in the clerk's office.

(2) Display colors. The color of the letters on Form HBC MH-15~~[the notice]~~ shall contrast with the background color of Form HBC MH-15~~[the notice]~~.

(3) Size. The size of Form HBC MH-15 shall be a minimum of eight and one-half (8 1/2) by eleven (11) inches.

(4) Material used. Form HBC MH-15 shall be printed with and on material that will not deteriorate.

(5) Replacement. If a current notice or the Form HBC MH-15 becomes damaged or unreadable, the notice or Form HBC MH-15 shall be removed and a newly printed Form HBC MH-15 shall be posted in its place~~[The notice shall be printed with and on material that will not deteriorate and shall be of sufficient size to be clearly read by each resident entering the park].~~~~[(3) The information on the notice may also be printed in an appropriate legal agreement or publication distributed by the park.]~~

(4) The size of the notice shall be a minimum of eight and one-half (8 1/2) by eleven (11) inches.]

Section 3. Incorporation by Reference. (1) Form HBC MH-15, "Notice of Fire-safety Responsibilities", August 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. and 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET**

**Department of Housing, Buildings and Construction  
Building Code Enforcement, Manufactured Housing Section  
(As Amended at ARRS, November 13, 2018)**

**815 KAR 25:050. Administration and enforcement of manufactured housing construction standards.**

RELATES TO: KRS 227.550 - ~~227.665~~, ~~227.555~~, ~~227.570~~, ~~227.580~~, ~~227.590~~, ~~227.600~~, 227.990, 227.992, 42 U.S.C. Chapter 70

STATUTORY AUTHORITY: KRS 227.590, ~~227.600~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the Department of Housing, Buildings and Construction~~[department]~~~~[Manufactured Home Certification and Licensure Board]~~ to promulgate administrative regulations governing the standards for the manufacture and sale of manufactured homes and mobile homes~~[housing]~~. KRS 227.600 requires the department to establish forms for application for

seals of approval for previously owned manufactured homes or mobile homes which are not covered by the National Manufactured Housing Construction and Safety Standards Act and for previously owned recreational vehicles.~~[establishes B seal requirements for manufactured homes or mobile homes.]~~  
This administrative regulation establishes standards for the design, manufacture, installation, and sale of new and used manufactured homes and mobile homes, and ~~for~~~~[when a]~~ B seal application requirements~~is to be applied to a manufactured home or mobile home~~.

Section 1. Limitations on the Conversion or Alteration of a Home. (1) Retailer repairs. A retailer shall not make any of the following changes to a manufactured home or mobile home without the written approval of the manufacturer or the manufacturer's agent:

(a) The addition or deletion of a window, door, or partition;

(b) The addition of an electrical circuit to accommodate a washer or dryer;

(c) The conversion of a heating, cooling, or fuel burning system from one (1) fuel to another, such as electric to gas, or gas to electric or oil;

(d) The use of improperly listed materials for the repair of a unit; or

(e) The installation of an unlisted heating, cooling, or fuel burning appliance.

(2) Certified retailer repairs. A certified retailer may alter or convert equipment and make repairs associated with the sale of a used manufactured home or mobile home in accordance with this administrative regulation~~[and the applicable codes adopted herein]~~.

(3) Changes requested by the purchaser. A change to the equipment, an appliance, or the interior or exterior furnishings of the home shall be made only with the written agreement of the purchaser.

(4) Other changes. The following actions shall be consistent with the sales contract in quality and quantity:

(a) Replacement or removal of equipment or an appliance listed on the data plate;

(b) Change or removal of furniture; or

(c) Other cosmetic changes.

Section 2. Retailer Lot Inspections. An employee of the department may enter a retailer's place of business to inspect:

(1) Each manufactured home or mobile home to ensure compliance with state and federal law; and

(2) All records a retailer is required to maintain in accordance with Section 3(1) through (3) of this administrative regulation~~3(1)(a) through (c)]~~.

Section 3. Required Records.~~[(1)]~~ The following records shall be maintained on the business premises from which the manufactured home or mobile home was sold or at corporate headquarters, if the headquarters are located in the Commonwealth, for at least three (3) years:

~~(1)(a)]~~ Sales or purchase agreements, including Forms HBC MH-10, HBC MH-11, and HBC MH-8;

~~(2)(b)]~~ Unit Inspection, Form HBC MH-16; and

~~(3)(c)]~~ Monthly Manufactured Home Dealer Certification Form, Form HBC MH-7.

Section 4. Consumer Complaints. (1) Upon written complaint and request by an owner or occupant, and to determine compliance with applicable law, a state inspector from the department may enter a privately-owned manufactured home or mobile home sold by a retailer.

(2) The department shall instruct the responsible party, either retailer, certified installer, or manufacturer, to correct a violation if the state inspector determines that:

(a) The home is in violation of ~~[applicable]~~ construction standards contained in the federal act;

(b) The home has been damaged in transit; or

(c) The installation violates ~~[applicable]~~ installation standards

contained in the federal act.

(3) Failure of the retailer, certified installer, or manufacturer to correct a violation of safety standards shall subject the responsible licensee or certificate holder to the penalties established in KRS 227.630.

Section 5. Installation Inspections for used homes. The department may make random inspections, prior to or after installation of a used home, to:

(1) Determine compliance with the minimum installation requirements contained in the federal act;

(2) Ensure the used home is properly sealed;

(3) Ensure that the used[a] home has not been damaged in transit; or

(4) Ensure the used home is correctly installed.

Section 6. Certified Retailer. (1) A certified retailer shall meet the following requirements:

(a) Employ at least one (1) installer certified in accordance with 815 KAR 25:080;

(b) Certify to the department that the dealership is capable of performing minor maintenance to the following systems of manufactured homes:

1. Plumbing;
2. Heating;
3. Cooling;
4. Fuel-burning; and
5. Electrical; **and**

(c) Complete and submit Form HBC MH/RV-2 to the department.

(2) A certified retailer shall not:

**(a)1.** Perform negligent inspection or repair of a unit; or

**(b)2.** Apply the wrong seal to a unit.

(3) The department shall maintain a list of certified retailers qualified to practice in Kentucky.

Section 7. Inspection of Used Manufactured Homes or Mobile Homes. (1) A used manufactured home or mobile home requiring a new seal shall be inspected by a state inspector or a certified retailer. The state inspector or certified retailer shall affix a **B1/B** seal indicating the manufactured home's or mobile home's compliance or noncompliance with the federal act~~the applicable federal standards~~ under which the home was constructed. A state inspector or certified retailer shall inspect:

(a) The plumbing and waste systems to determine if the systems are operable and free of leaks;

(b) The cooling system and heating or fuel-burning system to determine if they are operational;

(c) The electrical system, including the main circuit box, each outlet, and each switch to detect:

1. A damaged covering;
2. A missing screw; or
3. Improper installation;

(d) The presence of adequate and operable smoke detection equipment;

(e) The doors, windows, and general structural integrity of the unit;

(f) The existence of two (2) exits;

(g) Storm windows in a manufactured home, but not in a mobile home; and

(h) The sealing of all exterior holes to prevent the entry of rodents.

(2) A unit that is not in compliance with the applicable federal standards under which it was constructed shall be issued a B2 seal unless brought into compliance.

Section 8. Application for Seals. (1) A retailer who possesses a used manufactured home or mobile home without a B seal, shall apply to the department for a B seal prior to offering the manufactured home or mobile home for resale. The application shall be:

(a) Filed on Form HBC MH-12; and

**(b)1.** Accompanied by a request for an inspection; or

**2.1(e)** Accompanied by notification that a certified retailer will conduct the inspection.

(2) Placement of B seals.

(a) Each B seal shall remain the property of the department and be:

1. Assigned and affixed to a specific manufactured home or mobile home;

2. Transferable only if assigned between retailers;

3. Void **if/when** not affixed as assigned;

4. Returned to the department if unused; and

5. Seized for a violation of KRS 227.550 to 227.665 or this administrative regulation.

(b) The B seal shall be securely affixed on or next to the main entry door on the handle side at approximately handle height.

(c) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.

(3) Lost or damaged B seals.

(a) If a B seal is lost or damaged, the owner shall notify the department immediately, in writing, specifying:

1. The manufacturer;
2. The manufactured home serial number; and
3. The seal number, if known.

(b) A damaged B seal shall be promptly returned to the department.

(c) A lost or damaged B seal shall be replaced by the department after an inspection and payment of the appropriate fee under Section 10 of this administrative regulation.

Section 9. Inspection of Used Homes in Manufacturer's or Retailer's Possession. **(1)1(a)** A retailer or manufacturer shall re-inspect and place a new B seal on a repossessed home or a home taken in trade or purchased by a retailer or manufacturer before the manufactured home or mobile home is offered for sale.

**(2)1(b)** A retailer or manufacturer shall submit to the department on a completed Form HBC MH-16 prior to placing a B seal on the used manufactured home or mobile home to certify compliance with Section 7(1)(a) through (h) of this administrative regulation.

**(3)1(c)** A retailer shall remove any existing B seal upon taking possession of a used home.

Section 10. Fees for inspections of used homes. (1) The fee for an inspection of a used home shall be:

(a) If performed by a certified retailer:

1. Seventy-five (75) dollars;
2. Thirty-two (32) cents per mile traveled, measured from the place of the certified retailer's place of business; and
3. Twenty-five (25) dollars for the seal; and

(b) If performed by the department:

1. Seventy-five (75) dollars; and
2. Twenty-five (25) dollars for the seal.

(2) The department shall charge no fee for random inspections conducted pursuant to Section 5 of this administrative regulation.

Section 11. Prohibition of Sales. (1) A home shall not be sold or transferred for use as human habitation or occupancy without:

(a) A current, valid, marketable title; and

(b) A HUD label or a B1 seal.

(2) A used home with a B2 seal shall not be resold unless the purchaser executes Form HBC MH-8.

(3) Sales between retailers. The requirement that a retailer inspect and apply B seals to each home before it is sold **shall/does** not apply **if/when** the resale is between retailers.

(4) As a condition of continued licensure, a retailer shall:

(a) Not sell or offer for sale a manufactured home or mobile home for which marketable title cannot be conveyed to the purchaser;

(b) Provide an application for title as soon as possible; and

(c) Demonstrate good cause for delay in providing an application for title, upon purchaser complaint.

Section 12. Red Tagging. (1) The department shall:

(a) Attach a red tag to a manufactured home or mobile home

found in violation of KRS 227.550 to 227.665 or this administrative regulation; and

(b) Furnish the retailer with a copy of the red tag.

(2) The red tag shall not be removed and the home shall not be sold unless:

(a) The department approves the correction of each violation and the red tag removal; or

(b) The sale is from an unlicensed retailer to a certified retailer, who applies a B seal and resells the manufactured home or mobile home.

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

(a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition;

(b) "Form HBC MH-7, Monthly Manufactured Home Retailer Certification Form", August 2018;

(c) "Form HBC MH-8, Affidavit of Sale (Salvage Only)", August 2018;

(d) "Form HBC MH-10, Consumer Protection Notice", August 2018;

(e) "Form HBC MH-11, Release for Delivery", August 2018;

(f) "Form HBC MH-12, Application Form for Purchasing ~~"B"~~ "Seals", August 2018;

(g) "Form HBC MH/RV-2, Request for Approval to Inspect", August 2018; and

(h) "Form HBC MH-16, Unit Inspection for B-Seal", August 2018. ~~;~~ **and**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>. (Section 1. Definitions. (1) "Alteration or Conversion" means the replacement, addition, modification or removal of equipment, an appliance, or an installation that may affect:

(a) The body and frame design and construction; or

(b) Any one (1) of the following systems:

1. Plumbing;
2. Heat-producing;
3. Cooling;
4. Fuel burning;
5. Electrical; or
6. Smoke detection.

(2) "ANSI" means the American National Standards Institute as referenced in A225.1, Manufactured Home Installations, 1994 Edition.

(3) "Certified inspector" means a manufactured housing inspector employed by the office.

(4) "Certified retailer" means a licensed retailer who:

(a) Employs at least one (1) installer certified in accordance with 815 KAR 25:080; and

(b) Has certified to the office that the dealership is capable of performing minor maintenance to the following systems of manufactured homes:

1. Plumbing;
2. Heating;
3. Cooling;
4. Fuel burning; and
5. Electrical.

(5) "Class B1 Seal" and "Class B2 Seal" is defined by KRS 227.550(3), and signify the following:

(a) "B1 seal" means the unit has been inspected and found to be in compliance with applicable standards for human habitation; and

(b) "B2 seal" means the unit:

1. Has been inspected and found not to be in compliance with applicable codes;
2. Is a salvage unit unfit for human habitation; and
3. Shall be sold only for the purpose of use as a storage or utility building.

(6) "Factory-built housing" is defined by KRS 227.550(8).

(7) "Federal act" are defined by KRS 227.550(6).

(8) "Manufactured home" is defined by KRS 227.550(7).

(9) "Manufacturer" is defined by KRS 227.550(9).

(10) "Mobile home" is defined by KRS 227.550(10).

(11) "Office" is defined by KRS 227.550(11).

(12) "Red tag" means a written notice which is applied to a manufactured home or mobile home by a representative of the office in accordance with Section 12 of this administrative regulation signifying that it shall not be sold because repairs are required or the appropriate seal has not been applied.

(14) "Retailer" is defined by KRS 227.550(4).

(15) "Salvage unit" means a used manufactured or mobile home not approved for human habitation.

(16) "Used home" means a manufactured or mobile home offered for sale or sold after the original purchase.

Section 2. Limitations on the Conversion or Alteration of a Home by the Retailer. (1) A retailer shall not make any of the following changes to a manufactured or mobile home without the written approval of the manufacturer or the manufacturer's agent:

(a) The addition or deletion of a window, door, or partition;

(b) The addition of an electrical circuit to accommodate a washer or dryer;

(c) The conversion of a heating, cooling, or fuel burning system from one (1) fuel to another, such as electric to gas, or gas to electric or oil;

(d) The use of improperly listed materials for the repair of a unit; or

(e) The installation of an unlisted heating, cooling, or fuel burning appliance.

(2) Certified retailer repairs. A certified retailer is authorized to alter or convert equipment and make repairs associated with the sale of a used manufactured or mobile home, in accordance with this administrative regulation and the applicable codes adopted herein.

(3) Changes requested by the purchaser. A change to the equipment, an appliance, or the interior or exterior furnishings of the home shall be made only with the written agreement of the purchaser.

(4) Other changes. The following actions shall be consistent with the sales contract in quality and quantity:

(a) Replacement or removal of equipment or an appliance listed on the data plate;

(b) Change or removal of furniture; or

(c) Other cosmetic changes.

Section 3. Retailer Lot Inspections. An officer, agent, or employee of the office may enter a dealer's place of business in order to inspect:

(1) Each manufactured or mobile home's equipment and equipment installation to insure compliance with the provisions of:

(a) KRS 227.550 to 227.660;

(b) The Federal Act; and

(c) This administrative regulation; and

(2) The maintenance of required records as set forth in Section 4 of this administrative regulation.

Section 4. Required Records. (1) The following records shall be maintained on the premises of the lot from which the home was sold or at corporate headquarters, if headquarters are located in the state of Kentucky, for at least three (3) years:

(a) Sales or purchase agreements, including Forms KMH 101, KMH 104 and HBCMH 28;

(b) Unit Inspection, Form HBCMH 40; and

(c) Monthly Manufactured Home Dealer Certification Format, Form HBCMH 23.

(2) A written request for additional material required by the office for the purpose of audit or inspection, shall identify the record, file, or document required and the specific complaint or cause for the request. A licensee shall not be required to furnish a record deemed confidential or privileged because of purchaser or lender privacy protections under any federal, state or local law.



~~Section 5. Consumer Complaints. (1) Upon written complaint and request by an owner or occupant, and in order to determine compliance with applicable law, an inspector from the office may enter a privately-owned manufactured or mobile home sold by a retailer.~~

~~(2) The office shall instruct the responsible party, either retailer, certified installer, or manufacturer, to correct a violation if the inspector determines that:~~

~~(a) The home is in violation of applicable construction standards;~~

~~(b) The home has been damaged in transit; or~~

~~(c) The installation violates applicable installation standards.~~

~~(3) Failure of the retailer, certified installer, or manufacturer to correct a violation of safety standards shall subject the responsible licensee or certificate holder to the penalties established in KRS 227.630.~~

~~Section 6. Installation Inspections. The office may make random inspections, prior to or after installation, to:~~

~~(1) Determine compliance with the minimum installation requirements;~~

~~(2) Assure that a home has not been damaged en route; or~~

~~(3) Assure the home is correctly installed.~~

~~Section 7. Retailer Inspection of Used Manufactured Homes in Manufacturer's or Retailer's Possession. (1) A repossessed home or a home taken in trade or purchased by the retailer, shall be re-inspected and certified to the office on Form HBCMH 40 regarding compliance with Section 9(1)(a) through (h) of this administrative regulation.~~

~~(a) An existing B seal shall be removed upon trading or purchase. The unit shall be reinspected and a new seal shall be affixed to the unit if it meets applicable requirements.~~

~~(b) A manufactured unit shall not be resold as a dwelling unless it qualifies for and has affixed to it a B1 seal.~~

~~(c) The retailer shall affix the appropriate seal to the unit prior to possession or transportation of the unit.~~

~~(2) A B2 seal unit shall not be resold unless the purchaser knowingly and willingly signs Form HBCMH 28.~~

~~Section 8. Special Exemptions for Retailers License Real estate developer and retailer venture. A retail license shall not be required of a developer who purchases new HUD homes from a licensed Kentucky retailer, places the homes on a parcel of land, and offers the homes for sale to ultimate consumers, if the following conditions are met:~~

~~(1) The developer receives prior written approval from the office;~~

~~(2) The homes are installed by a certified installer;~~

~~(3) The developer owns the homes and the lots upon which the homes are installed;~~

~~(4) The manufacturer's warranty period begins at the time possession is transferred from the developer to the consumer-occupant;~~

~~(5) The manufacturer's warranty support is performed in accordance with generally accepted standards for retail transactions;~~

~~(6) The manufacturer's documentation shall contain the name and location of the:~~

~~(a) Developer;~~

~~(b) Development; and~~

~~(c) Retail dealer; and~~

~~(7) The retailer and installer shall provide the required services as warranted and as required by laws governing retailer and installer license or certification.~~

~~Section 9. Process for Application of B1 Seals. (1) Every used manufactured or mobile home shall be inspected by a certified inspector or a certified retailer and a B seal indicating its compliance or noncompliance with the applicable federal standards under which the home was constructed shall be affixed to the home. The inspection shall consist of the following:~~

~~(a) Inspection of the plumbing and waste systems to determine~~

~~if the systems are operable and free of leaks;~~

~~(b) Inspection of the cooling system, and heating or fuel-burning system to determine that they are operational;~~

~~(c) Inspection of the electrical system, including the main circuit box, each outlet, and each switch in order to detect:~~

~~1. A damaged covering;~~

~~2. A missing screw; or~~

~~3. Improper installation;~~

~~(d) Inspection for the existence of adequate and operable smoke detection equipment;~~

~~(e) Inspection of the doors, windows, and general structural integrity of the unit;~~

~~(f) Inspection for the existence of two (2) exits;~~

~~(g) Inspection for storm windows in a manufactured home, but not in a mobile home; and~~

~~(h) The sealing of all exterior holes to prevent the entrance of rodents.~~

~~(2) Sales between retailers. The requirement that a retailer inspect and apply B seals to each home before it is sold does not apply if the resale is between retailers.~~

~~(3) A retailer desiring to become a certified retailer and to perform the B seal inspection and certification service, shall make application to the office on Form HBCMH 29.~~

~~(4)(a) The office shall maintain a list of certified retailers qualified to practice in Kentucky.~~

~~(b) A certified retailer shall not:~~

~~1. Perform negligent inspection or repair of a unit; or~~

~~2. Apply the wrong seal to a unit. A unit that is not in compliance with the applicable federal standards under which it was constructed:~~

~~(a) Brought into compliance and issued a B1 seal; or~~

~~(b) Issued a B2 seal.~~

~~(5) Fees for requested inspections. The fee for a courtesy inspection of a manufactured home shall be:~~

~~(a) If performed by a certified retailer:~~

~~1. Seventy-five (75) dollars;~~

~~2. Thirty-two (32) cents a mile, measured from the place of the certified retailer's place of business; and~~

~~3. Twenty-five (25) dollars for the seal; and~~

~~(b) If performed by the office:~~

~~1. Seventy-five (75) dollars; and~~

~~2. Twenty-five (25) dollars for the seal.~~

~~Section 10. Prohibition of Sales. (1) A home shall not be sold or transferred for use as human habitation or occupancy without:~~

~~(a) A current, valid, marketable title; and~~

~~(b) A HUD label or a B1 seal.~~

~~(2) As a condition of continued licensure, a retailer shall:~~

~~(a) Not sell or offer for sale a manufactured home for which a marketable title cannot be presented to the purchaser;~~

~~(b) Provide an application for title as soon as possible; and~~

~~(c) Demonstrate good cause for delay in providing an application for title, if the purchaser makes complaint.~~

~~Section 11. Application for Seals. (1) A retailer who possesses a used manufactured home without a seal, shall apply to the office for a B seal. The application shall be:~~

~~(a) Filed on Form HBCMH 30; and~~

~~(b) Accompanied by a fee of twenty-five (25) dollars for each seal.~~

~~(2) Recordkeeping. A retailer shall:~~

~~(a) Maintain the following information, reported on Form HBCMH 23, for each new or used unit sold:~~

~~1. Unit serial number;~~

~~2. B1 or B2 seal number;~~

~~3. Date manufactured, if known;~~

~~4. Make of unit; and~~

~~5. Name and address of purchaser;~~

~~(b) Retain the completed Form HBCMH 23 for three (3) years; and~~

~~(c) Keep the form available to a field inspector upon request.~~

~~(3) Placement of seals.~~

~~(a) Each seal shall:~~

1. Be assigned and affixed to a specific manufactured or mobile home;
  2. Be transferable only if assigned between retailers;
  3. Be void when not affixed as assigned;
  4. Be returned to the office if unused;
  5. Remain the property of the office; and
  6. Be seized for a violation of KRS 227.550 to 227.665 or an administrative regulation implementing KRS 227.550 to 227.665.
- (b) The seal shall be securely affixed on the door on the handle side at approximately handle height.
- (c) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.
- (4) Lost or damaged seals.
- (a) If a seal becomes lost or damaged, the owner shall notify the office immediately, in writing, specifying:
1. The manufacturer;
  2. The manufactured home serial number; and
  3. The seal number, if known.
- (b) A damaged seal shall be:
1. Promptly returned to the office; and
  2. Replaced by the office at a cost of twenty-five (25) dollars.

**Section 12. Red Tagging.** (1) The office shall:

- (a) Attach a notice of noncompliance, or "red tag", to a manufactured home found to be in violation of KRS 227.550 to 227.665 or of this administrative regulation; and
- (b) Furnish the retailer with a copy.
- (2) The "red tag" shall not be removed and the home shall not be sold unless:
- (a) The office approves the correction of each violation and the red tag removal; or
- (b) For an unlicensed retailer, sold to only a retailer qualified to inspect, apply seals, and resell.

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

- (a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition;
- (b) "Form HBCMH 23, Monthly Manufactured Home Retailer Certification Format", September, 2007;
- (c) "Form HBCMH 28, Affidavit of Sale (Salvage Only)", September, 2007;
- (d) "Form HBCMH 29, Request for Approval to Inspect", September, 2007;
- (e) "Form HBCMH 30, Application Form for Purchasing "B" Seals", September, 2007;
- (f) "Form HBCMH 40, Unit Inspection for B-Seal", September, 2007;
- (g) "Form KMH 101, Consumer Protection Notice", September, 2007; and
- (h) "Form KMH 104, Release for Delivery", September, 2007.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Division of Fire Prevention, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.]

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET**

Department of Housing, Buildings and Construction  
Building Code Enforcement, Manufactured Housing Section  
(As Amended at ARRS, November 13, 2018)

**815 KAR 25:060. Licensing and certifications with manufactured homes and mobile homes[of manufactured home retailers].**

RELATES TO: KRS 227.550, 227.560, 227.570, 227.580, 227.590, 227.600, 227.610, 227.620, 227.630, 227.990

STATUTORY AUTHORITY: KRS [227.560] 227.570(2), (3), (4), 227.580, 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.590 requires the Department of Housing, Buildings and Construction[department][Manufactured Home Certification and Licensure Board] to promulgate administrative regulations governing the standards for the manufacture and sale of manufactured homes and mobile homes[housing].[KRS 227.560(1) requires the department to issue certificates of acceptability to qualifying manufacturers.] KRS 227.580 makes it unlawful for a manufacturer to manufacture, import, or sell manufactured homes in Kentucky without a certificate of acceptability. KRS 227.570(4) requires the department to promulgate administrative regulations to establish standards for the certified installer seal program[E.O. 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department]. This administrative regulation establishes standards for licensing persons and companies engaged in the sale of manufactured homes and mobile homes, establishes standards for certification of acceptability for manufacturers of manufactured homes, and establishes the requirements for certified installer seals and certification of manufactured home installers.

**Section 1. Licensed Retailer.** (1) License application.

(a) Except as provided in subsection (2) of this section, a person shall not engage in the business of selling manufactured homes or mobile homes within this state without holding a valid license issued by the department for each location.

(b) Before engaging in business, an applicant shall submit to the department:

1. The completed Form HBC MH-2;
2. A copy of a valid Kentucky sales tax certificate;
3. A check or money order for the annual license fee, in the amount of \$250 for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer; and
4. Proof of insurance for general liability coverage that complies with KRS 227.610 in the amount of at least:

- a. \$200,000 bodily injury or death for each person;
- b. \$300,000 bodily injury or death for each accident; and
- c. \$100,000 for damage to property.

(c) An applicant whose place of business is in another state and who possesses a valid retailer license in another state shall:

1. Comply with this section;
2. Not be required to maintain an established place of business within Kentucky, if the applicant is not offering a home for sale within Kentucky; and

3. Provide a Kentucky B seal for a used manufactured home or mobile home unit sold for delivery into Kentucky.

**(2) Exemptions from Licensure as a Retailer.**

(a) A manufactured home shall be exempt from seal requirements and a retailer exempt from licensing if the unit:

1. Is brought into Kentucky for exhibition purposes only;
2. Is not sold in Kentucky; and
3. Inspection does not reveal a condition hazardous to health or safety.

(b) Real estate developer and retailer venture. A retail license shall not be required of a developer who purchases new HUD homes from a licensed Kentucky retailer, places the homes on a parcel of land, and offers the homes for sale to ultimate

consumers, if:

1. The developer receives prior written approval from the department;

2. The home was installed by a certified installer;

3. The developer owns the homes and the lots upon which the homes are installed;

4. The manufacturer's warranty period begins upon possession and shall be transferred from the developer to the consumer-occupant;

5. The manufacturer's warranty support shall be performed in accordance with generally-accepted standards for retail transactions;

6. The developer's documentation contains the name and location of the:

a. Developer;

b. Development; and

c. Retailer; and

7. The retailer and installer provides the required services as warranted and as required by laws governing retailer and installer license or certification.

(3) Retailer's satellite location.

(a) An additional license shall not be required of a fully-licensed retailer for the display or sale of a manufactured home located on an individual lot, in a subdivision, land-lease community, or manufactured home or mobile home park.~~;~~

(b) A suitable sign identifying the name and business location of the retailer licensee shall be posted at the location.

(4) Qualified personnel required.

(a) Education requirements. A new retailer license or a renewal of an existing retailer license shall not be issued unless the retailer employs at least one (1) person in a management position who has successfully completed the educational training and departmental testing program administered as part of the Certified Installer Program under Section 4 of this administrative regulation. The proof of experience in Section 4(1)(a)4. shall not be required.

(b) Certification. The department shall classify a person qualifying under subsection (1) of this section as a certified manager.

(c) Exception. A certified manager shall not be required at each licensed location for a retailer with more than one (1) in-state location if:

1. The retailer has only one (1) set-up, installation, and delivery system located in Kentucky;

2. A certified manager supervises the work of the system; and

3. The arrangement is approved, in writing, by the department.

(5) Notification by Licensees.

(a) A retailer shall notify the department, in writing, within thirty (30) days of a change in any of the following:

1. Dealership name;

2. Address of business;

3. Retailer ownership interest of twenty-five (25) percent or more within a twelve (12) month period; or

4. A principal officer or chief managing officer of the firm.

(b) A change in ownership interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the license.

(c) A new license shall be required if an established business changes location to a different county.

(6) Maintenance of Records. A retailer shall:

(a) Complete and maintain Form HBC MH-7 for each new or used manufactured home or mobile home sold;

(b) Retain the completed Form HBC MH-7, for three (3) years; and

(c) Keep the form available to a field inspector upon request.

Section 2. Manufacturer's Certificate of Acceptability. (1) Requirements for issuance. An applicant for a manufacturer's certificate of acceptability shall submit to the department:

(a) A completed Form HBC MH/RV-1;

(b) Proof of insurance for general liability coverage that complies with KRS 227.610 in the amount of at least:

1. \$300,000 bodily injury or death for each person;

2. \$400,000 bodily injury or death for each accident; and

3. \$100,000 for damage to property; and

(c) A certificate of acceptability fee in the amount of \$500 for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, by check or money order made payable to the Kentucky State Treasurer.

(2) A manufacturer who is also a retailer shall comply with retailer licensing provisions in Section 1 of this administrative regulation.

(3) A manufacturer shall notify the department in writing, within thirty (30) days of a change in any of the following:

(a) Corporate name;

(b) Company address;

(c) Ownership interest of twenty-five (25) percent or more of the company within a twelve (12) month period;

(d) Location of a manufacturing facility;

(e) The number of facilities by virtue of the establishment of new manufacturing facility; or

(f) A principal officer of the firm.

(4) A change in ownership interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the certificate of acceptability.

(5)(a) A manufacturer who considers information relating to a building or in-plant quality control system to be proprietary shall designate the information as proprietary at the time of plan submission.

(b) The designated information shall be maintained and treated as proprietary by:

1. The department;

2. Inspection and evaluation personnel; and

3. Local enforcement agencies.

Section 3. Certified Installers. (1) Initial application.

(a) An applicant for certified installer shall submit to the department:

1. A completed Form HBC MH-3, Certified Installer Application;

2. An application fee of \$100;

3. Proof of successful completion of a fifteen (15) hour approved course of education;

4. Proof of regularly assisting in site preparation and installation functions:

a. Under the supervision of a certified installer;

b. For at least sixty (60) days; and

c. On at least five (5) homes;

5. A Passing score on the certified installer examination given by the department; and

6. A certificate verifying current worker's compensation insurance coverage, if the applicant is employed at the time of application.

(b) If an initial certificate is for a period of less than twelve (12) months, the fee shall be reduced on a pro rata monthly basis.

(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.

(3)(a) If the certified installer changes his business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the department and request an amended certificate reflecting the individual's status.

(b) If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or as having in its employ a certified installer until another certified person has become associated with that company.

(4) Certified Installer Seal.

~~[(a)]~~ A certified installer who installs a manufactured home or mobile home in accordance with KRS 227.570(3) and this administrative regulation shall place a certified installer seal on the home.

~~[(a)]~~ Certified installer seals shall be obtained from the department.

~~[(b)]~~ The application shall be:

1.~~[(a)]~~ Filed on Form HBC MH-12, Application for Purchasing Seals; and

2.~~[(b)]~~ Accompanied by a fee of twenty-five (25) dollars for each

seal.

(5) Application and placement of certified installer seals.

(a) Each certified installer seal consists of two (2) parts that shall be affixed as follows:

1. One (1) part shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home if a HUD label is not required; and

2. One (1) part shall be placed on the inside of the electrical panel in the manufactured home.

(b) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the certified installer seal.

(6) Lost or damaged seals.

(a) If a certified installer seal becomes lost or damaged, the owner shall notify the department immediately, in writing, specifying:

1. The manufacturer;

2. The manufactured or mobile home serial number; and

3. The certified installer seal number, if known.

(b) A damaged seal shall be:

1. Promptly returned to the department; and

2. Replaced by the department for a fee of twenty-five (25) dollars.

(7) Recordkeeping. A certified installer shall:

(a) Complete and maintain Form HBC MH 40-30, Monthly Certified Installer Certification, for each certified installation;

(b) Retain the completed Form HBC MH 40-30, Monthly Certified Installer Certification, for three (3) years; and

(c) Make a copy of the form available to a state inspector upon request.

(d) A certified installer shall send the department a monthly report of the information found in HBC MH 40-30 by mail, electronic mail, or facsimile.

Section 4. Incorrect or Incomplete Applications. (1) If there is an incorrect or incomplete application, the department shall:

(a) Issue a correction notice to an applicant within thirty (30) days of receiving a defective or incomplete application specifying the defect;

(b) Deem the application abandoned and the fee forfeited for an applicant who fails to submit a corrected application in accordance with the information supplied on the application correction notice, within thirty (30) days of receipt; and

(c) Process as a new application, a corrected application submitted after the thirty (30) day period.

Section 5. Renewals. (1) Expiration of a license and certificates. A license, a certificate of acceptability, and an installer certification, unless renewed, revoked, or suspended, shall expire on:

(a) For individuals, the last day of the licensee's birth month in the following year; or

(b) For corporations:

1. The licensee's month of incorporation in the following year;

or  
2. The last day of the licensee's birth month in the following year.

(2) Renewal of a license or certificates.

(a) A retailer, manufacturer, or a certified installer, wishing to renew a license or certification, shall submit the following:

1. A completed License and Certification Renewal Form HBC MH/RV-3;

2. Proof of continuing general liability insurance coverage; and

3. A check or money order for the annual license fee, in the amount of:

a. \$250 for a licensed retailer;

b. \$500 for a certificate of acceptability; or

c. Fifty (50) dollars for an installer certification.

(b) A retailer, manufacturer, or certified installer shall renew a license or certificate before the license or certificate expires according to subsection (1) of this section.

(c) A certified installer shall submit proof of completion of the continuing education requirements established in 815 KAR 1:030.

(d) A retailer and a manufacturer shall maintain at least minimum general liability insurance and shall notify the department if there is a change in insurance coverage.

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

(a) Form HBC MH/RV-1, "Application of Certificate of Acceptability for Manufactured Homes", ~~November~~**August** 2018;

(b) Form HBC MH-2, "Application for Manufactured Home Retailer's License", ~~November~~**August** 2018;

(c) Form HBC MH-3, "Certified Installer Application", ~~November~~**August** 2018;

(d) Form HBC MH/RV-3, "License and Certification Renewal", ~~November~~**August** 2018;

(e) "Form HBC MH-12, Application for Purchasing Seals", August 2018;

(f) "Form HBC MH-7, Monthly Manufactured Home Retailer Certification Format", August 2018; and

(g) "Form HBC MH 40-30, Monthly Certified Installer Certification", August 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. and 4:30 p.m. and is available online at <http://dhbc.ky.gov>. [Section 1. Definitions. (1) "Established place of business" is defined by KRS 227.550(5). (2) "Hard-surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt or macadam, compacted gravel or stone, or other material of similar characteristics. (3) "Offer for sale" means to: (a) Display, exhibit, sell, transfer, exchange, or otherwise advertise a manufactured or mobile home; or (b) Negotiate the purchase, sale, or exchange of a manufactured or mobile home for a fee, commission, compensation, or other valuable consideration. (4) "Office" is defined by KRS 227.550(11). (5) "Registration" means the transfer of title or other official recording of change of ownership. (6) "Retailer" is defined by KRS 227.550(4). (7) "Suitable sign" means a permanently erected sign with the dealership name and type in letters at least six (6) inches high and at least one and one-half (1 1/2) inches wide.

Section 2. Exemptions from Licensure as a Retailer. (1) A manufactured home shall be exempt from licensing and seal requirements if the unit:

(a) Is brought into Kentucky for exhibition purposes only;

(b) Is not sold in Kentucky; and

(c) Inspection does not reveal a condition hazardous to health or safety.

(2) Real estate developer and retailer venture. A retail license shall not be required of a developer who purchases new HUD homes from a licensed Kentucky retailer, places the homes on a parcel of land, and offers the homes for sale to ultimate consumers, if the following conditions are met:

(a) The developer receives prior written approval from the office;

(b) The home was installed by a certified installer;

(c) The developer owns the homes and the lots upon which the homes are installed;

(d) The manufacturer's warranty period begins upon possession and shall be transferred from the developer to the consumer-occupant;

(e) The manufacturer's warranty support shall be performed in accordance with generally accepted standards for retail transactions;

(f) The manufacturer's documentation contains the name and location of the:

1. Developer;

2. Development; and

3. Retailer; and

(g) The retailer and installer provides the required services as warranted and as required by laws governing retailer and installer license or certification.

(3) Retailer's satellite location.

(a) An additional license shall not be required of a fully-licensed retailer for the display or sale of a manufactured home located on an individual lot, in a subdivision, land-lease community, or manufactured or mobile home park located within the same or adjoining county as the licensee;

(b) A suitable sign identifying the name and business location of the retailer licensee shall be posted at the location.

Section 3. License Application. (1) Except as provided in Section 2 of this administrative regulation, a person shall not engage in the business of selling manufactured or mobile homes within this state without holding a valid license issued by the office for each location.

(2) Before engaging in business, an applicant shall provide the office with:

(a) The completed Form HBCMH 2;

(b) A copy of a valid Kentucky sales tax certificate;

(c) A check or money order for the annual license fee, in the amount of \$250 for a full year, or a reduced amount prorated on a monthly basis for a period of less than a full year, payable to the Kentucky State Treasurer;

(d) Proof of insurance for general liability coverage that complies with KRS 227.610 in the amount of at least:

1. \$200,000 bodily injury or death for each person;

2. \$300,000 bodily injury or death for each accident; and

3. \$100,000 for damage to property; and

(e) A verified statement that the applicant complies with zoning and other requirements of the local government necessary for a business to operate legally.

(3) A license, unless renewed, revoked, or suspended, shall expire on:

(a) For individuals, the last day of the licensee's birth month in the following year; or

(b) For corporations:

1. The licensee's month of incorporation in the following year;

and

2. The last day of the licensee's birth month in the following year.

(4) A licensed retailer shall maintain at least minimum general liability insurance and shall notify the office of a change in insurance coverage.

(5) An applicant whose place of business is in another state and who possesses a valid retailer license in another state shall:

(a) Be licensed upon completion and submission of Form HBCMH 2 and compliance with this section;

(b) Not be required to maintain an established place of business within Kentucky, if the applicant is not offering a home for sale within Kentucky; and

(c) Provide a Kentucky seal for a used manufactured housing unit sold for delivery into Kentucky.

(6) The office shall:

(a) Issue a correction notice to an applicant within thirty (30) days of receiving a defective or incomplete applicant specifying the defect;

(b) Deem the application abandoned and the fee forfeited for an applicant who fails to submit a corrected application in accordance with the information supplied on the application correction notice, within thirty (30) days of receipt; and

(c) Process as a new application, a corrected application submitted after the thirty (30) day period.

Section 4. Qualified Personnel Required: The Certified Manager. (1) Education requirements. A new retailer license or a renewal of an existing retailer license shall not be issued unless the retailer employs at least one (1) person in a management position who has successfully completed the educational training and departmental testing program administered as part of the Certified Installer Program under 815 KAR 25:080. The proof of

experience in 815 KAR 25:080, Section 2(1)(d), shall not be required.

(2) Certification. The office shall classify a person qualifying under subsection (1) of this section as a certified manager.

(3) Exception. A certified manager shall not be required at each licensed location for a retailer with more than one (1) in-state location if:

(a) The retailer has only one (1) set-up, installation, and delivery system located in Kentucky;

(b) A certified manager supervises the work of the system; and

(c) The arrangement is approved, in writing, by the office.

Section 5. Notification by Licensees. (1) A retailer shall notify the office, in writing, within thirty (30) days of a change in any of the following:

(a) Dealership name;

(b) Location of established business;

(c) Retailer ownership interest of twenty-five (25) percent or more within a twelve (12) month period; or

(d) A principal officer or chief managing officer of the firm.

(2) A change in ownership interest of less than twenty-five (25) percent of the company within a twelve (12) month period shall be reported at the time of the renewal of the license.

(3) A new license shall be required if an established business changes location to a different county.

Section 6. Maintenance of Records. A retailer shall:

(1) Maintain the following information, reported on Form HBCMH 23, for each new or used unit sold:

(a) Unit serial number;

(b) B1 or B2 seal number;

(c) Date manufactured, if known;

(d) Make and model of unit; and

(e) Name and address of purchaser;

(2) Retain the completed Form HBCMH 23, for three (3) years; and

(3) Keep the form available to a field inspector upon request.

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

(a) "Form HBCMH 2, Application for Manufactured Home Retailer's License", September 2007; and

(b) "Form HBCMH 23, Monthly Manufactured Home Retailer Certification Format", September 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, between 8 a.m. and 4:30 p.m., Monday through Friday.]

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(As Amended at ARRS, November 13, 2018)**

**815 KAR 25:090. Site preparation, [and] installation, and inspection [minimum] requirements.**

RELATES TO: KRS 227.550, 227.570, 227.590[(2)], 227.660, 227.990, 24 C.F.R. 3285, **24 C.F.R. 3286.7**

STATUTORY AUTHORITY: KRS 227.570[(2)], 227.590(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS



227.570(2)] requires the Department of Housing, Buildings and Construction[department](office) to establish and enforce standards and requirements for installation of plumbing, heating, and electrical systems in manufactured homes or mobile homes[of installation, adopted by the Manufactured Home Certification and Licensure Board,] as it determines are reasonably necessary to protect public health and safety. KRS 227.590(1) requires the department to establish administrative regulations reasonably necessary to effectuate the provisions of KRS 227.550 to 227.660[charges the board with establishing the standards and the office with enforcing state and federal law]. This administrative regulation establishes minimum requirements for the installation and inspection of manufactured homes or mobile homes on permanent foundations.

Section 1. [Definitions: (1) "ANSI" means the American National Standards Institute as referenced in ANSI-A225.1, Manufactured Home Installations, 1994 Edition, incorporated by reference.

(2) "Board" is defined in KRS 227.550(1).

(3) "Certified installer" means the individual certified, in accordance with 815 KAR 25:080, to install manufactured homes.

(4) "Installation" means the work performed by a certified installer on-site and the operations involved in the delivery, permanent securing, and placement of a manufactured home for the purpose of human occupancy, to:

(a) Include the following:

1. Preparation of a permanent foundation;
2. Placement of polyvinyl covering on the ground, if applicable;
3. Placement and connection of utilities performed by appropriately-licensed contractors;
4. Anchoring and tying down; and
5. Installation of other accessory or appurtenance specified in the sales contract; and

(b) Exclude the following:

1. site preparation; and
2. For a single-section home, ground set after site preparation.

(5) "Office" is defined in KRS 227.550(11).

(6) "Permanent foundation" means a system of supports:

- (a) capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure;
- (b) Constructed of concrete; and
- (c) Placed at a depth below grade adequate to prevent frost damage.

(7) "Placement" means blocking, leveling, and anchoring a manufactured home upon a foundation system prior to occupancy.

(8) "Retailer" is defined in KRS 227.550(4).

(9) "Site preparation" means work performed on the land in preparation for installation of the home:

(a) Including:

1. Clearing and initial grading;
2. Water drainage; and
3. Vegetation control; and

(b) Excluding final grading after the home has been set.

Section 2.] Minimum Site Preparation and Installation Standards. (1) Site preparation, installation, and ground anchoring shall be performed for:[of]

(a) A new manufactured home[new home or a used home with a B1 seal shall be performed] in accordance with the manufacturer's instructions, if available, or 24 C.F.R. Part 3285; and

(b) A used manufactured home or a mobile home in accordance with the manufacturer's instructions, if available, or ANSI A225.1, Manufactured Home Installation, as established by KRS 227.570(3).

(2) The permanent foundation[system] shall be installed [include]:

(a) In accordance with the manufacturer's installation instructions;

(b) In accordance with the following methods and materials designed to protect from the effects of frost heave:

1. With conventional footings below the frost line depth;
2. As a monolithic slab system in accordance with accepted

engineering practice

and approved by the manufacturer and its associated DAPIA; or

3. As an insulated foundation system in accordance with accepted engineering practice and approved by the manufacturer and its associated DAPIA; and

(c) Using the following materials and methods:

1. [(a)] Piers set partially or completely below grade;

2. [(b)] Footers and perimeter blocking, if required;

3. ABS pads;

4. [(c)] Ground anchors, concrete anchors, or other anchoring systems approved by the manufacturer and its associated DAPIA;

5. Concrete block;

6. [(d)] Concrete slab;

7. [(e)] Continuous and spot[pot] footings;

8. [(f)] Pile or post systems; [(g)] Pile and post systems;]

9. Steel supports;

10. [(h)] Concrete, concrete block, or other load bearing perimeter walls; or

11. [(i)] Another foundation system approved by a licensed engineer as well as the manufacturer and its associated DAPIA.

(3) The following parts of the chassis of a manufactured home shall be removed after the on-site construction of a permanent foundation:

(a) Towing hitch;

(b) Running gear;

(c) Axles;

(d) Brakes;

(e) Wheels; and

(f) Other parts that operate only during transport.

(4) Only a certified installer shall install a manufactured home or mobile home[A foundation footing shall be considered frost-free if its depth is twelve (12) inches from grade level under the I-beam].

(5) All exterior electric, water, and sewer connections and additions to a manufactured home or mobile home shall be performed in accordance with the Kentucky Residential Code, as incorporated by reference in 815 KAR 7:125[A perimeter footing shall be considered frost-free if its depth is twenty-four (24) inches from the final grade].

(6)(a) Underpinning shall be installed on a manufactured home or mobile home if required by the manufacturer's instructions.

(b) If underpinning is installed on a manufactured home or mobile home, the underpinning shall include at least one (1) access panel or door that shall:

1. Be at least eighteen (18) inches in width and twenty-four (24) inches in height;

2. Be at least three (3) square feet in dimension;

3. Be located so that all utility connections under the home are accessible;

4. Be clearly labeled for identification; and

5. Not be obstructed.

(c) An access panel required by this subsection shall not be permanently secured to the home.

Section 2. Site Preparation and[Section 3.] Installation [Inspections and] Responsibility. (1) Responsibility for site preparation. A retailer shall:

(a) Perform site preparation;

(b)[With respect to responsibility for site preparation and installation services;

1. Perform site preparation and installation services;

2.] Contract with an independent certified installer to perform site preparation[or installation services]; or

(c)[3.] Assist a requesting purchaser in documenting[to document] the purchaser's voluntary responsibility, if any, to perform site preparation[and installation] functions specified in Form HBC MH-10[KMH-101] and the contract by:

1.[a.] Providing, explaining, and assisting in the completion of Form HBC MH-10[KMH-101]; and[b.] Explaining the provisions of Form KMH-101;

c. Assisting in the completion of Form KMH-101;]

2.[d.] Determining the readiness of the site.

(2) Responsibility for installation services. A retailer shall:

(a) Perform installation services, if the retailer is a certified installer or employs a certified installer; or

(b) Contract with an independent certified installer to perform installation services.

(3) Responsibilities upon the execution of a contract of sale of a new manufactured home. A retailer shall:

(a) Submit an application to the department that contains the following information:

1. Name, address, and telephone number of the purchaser;

2. Address of the manufactured home, if different from the purchaser's address;

3. Date of purchase;

4. United States Department of Housing and Urban Development certification label (HUD tag) number;

5. Serial number of the new manufactured home;

6. Date of installation; and

7. Name and certification number of the certified installer;

(b) before the home is delivered, if the contract and form relieve the retailer of the foundation construction function;

e. Providing the manufacturer's footing design, which the office will inspect;

f. Collecting an on-site inspection fee of \$100 from the purchaser at the time the contract is signed; and

g. Remitting the inspection fee to the office at the time of the inspection;

(b) Supply the purchaser with Form HBC MH-17 [Form KMH 102 at the time the contract for sale of a new or B1 seal home is executed]; and

(c) Include in its closing documents for the sale of a new manufactured home the following:

1. A notice, on a form provided by the department, advising the purchaser that inspection of the new manufactured home's installation is required; and

2. The consumer disclosure as required by 24 C.F.R. Part 3286.7.

(4) Unlicensed retailers.

(a) An unlicensed retailer shall not sell or offer for sale more than one (1) manufactured home or mobile home in any consecutive twelve (12) month period.

(b) By no later than ten (10) days after the sale of a manufactured home or mobile home by an unlicensed retailer, the unlicensed retailer shall notify the department in writing of the following:

1. Name, address, and telephone number of the unlicensed retailer;

2. Name, address, and telephone number of the purchaser;

3. Date of purchase;

4. United States Department of Housing and Urban Development certification label (HUD tag) number, if any;

5. Serial number of the new manufactured home; and

6. Date of installation.

Section 3. Inspections of New Manufactured Home Installations.

(1) Site and footer inspection.

(a) The retailer shall do the following:

1. Coordinate with the department to schedule the site and footer inspection.

2. Provide the manufacturer's footing design to the department for review at least five (5) working days prior to the department's inspection of the site and footer location.

3. Not commence, or cause to commence, any installation services other than the site and footer location preparation until the department has completed its inspection and issued approval of the site preparation and footer location preparation.

(b) Before the new manufactured home is set, the department shall inspect:

1. The site preparation; and

2. The location intended for the methods and materials used to protect against frost heave in accordance with the manufacturer's installation instructions and this administrative regulation.

(c) The site and footer inspection shall be made by a state inspector.

(d) The site and footer inspection may be completed by a physical inspection or an electronic inspection.

(e) A site and footer inspection shall be scheduled with the retailer, certified installer, or property owner at least one (1) business day in advance and shall be completed by the department within three (3) business days of the scheduled inspection.

(2) Installation inspection.

(a) The department shall inform the installer, purchaser, and, if applicable, the retailer, at least one (1) day prior to the intended inspection of the installation of a new manufactured home.

(b) A person shall not obstruct, hinder, or delay a state inspector in the performance of his or her duty.

(c) 1. Upon completion of the inspection of a new manufactured home, the state inspector shall:

a. Issue a report to the installer, purchaser, and, if applicable, the retailer verifying that the installation complies with the minimum installation requirements of Section 2(1) of this administrative regulation; or

b. Issue a report to the installer and, if applicable, the retailer identifying all deficiencies and the corrective action required to ensure the installation complies with the minimum installation requirements of Section 2(1) of this administrative regulation.

2.a. The installer shall correct all deficiencies and take all corrective action identified by the state inspector's report of deficiency within thirty (30) days of the date of issuance of the report.

b. If all required corrections have been made within the period established in paragraph (b)2.a. of this subsection, the state inspector shall issue a report to the installer, purchaser, and, if applicable, the retailer verifying that the installation complies with the minimum installation requirements of Section 2(1) of this administrative regulation.

c. If any of the required corrections have not been made within the period established in paragraph (b)2.a. of this subsection, the state inspector shall issue a report to the installer, purchaser, and, if applicable, the retailer identifying:

(i) [4.] All deficiencies that were corrected in compliance with the report established in paragraph (b)1.b. of this subsection; and

(ii) [2.] All remaining deficiencies, and the remaining corrective action required to ensure the installation complies with the minimum installation requirements of Section 2(1) of this administrative regulation.

Section 4. Inspection Fees. (1) Installation inspection fee.

(a) The retailer shall pay the department an installation inspection fee of \$110 prior to the site and footer inspection conducted by the department.

(b) One (1) site and footer inspection and one (1) installation inspection shall be included by the payment of the installation inspection fee.

(2) Re-Inspection fees.

(a) A retailer shall pay a \$100 re-inspection fee to the department for additional inspections needed to determine if deficiencies found during the site and footer inspection or the installation inspection were corrected.

(b) The re-inspection fee shall be paid before or at the time of any subsequent inspection. [Before constructing a foundation, inspect the site for soil stability, height requirements, and vegetation removal;

(d) Ascertain that a problem revealed by site inspection is properly resolved;

(e) When satisfied that the foundation is ready for the home to be set, notify the office, by telephone, facsimile machine, or mail, at least three (3) working days before delivering the home to the consumer's site; and

(f) Not deliver or set up a home for which the retailer has requested a preinstallation inspection pursuant to paragraph (e) of this subsection, unless:

1. An office inspector issues Form KMH 104; or

2. The office fails to inspect within three (3) days of receipt of the notice required by paragraph (e) of this subsection; and

3. Foundation work has been performed properly; and

(g) If a foundation inspection is required, forward to the Office of the State Fire Marshal a completed Form KMH 105, Request for Inspection. The retailer shall hold the inspection fee and Form KMH 101 until both items can be retrieved by the inspector from the State Fire Marshal's Office prior to the inspection.

(2) The inspector shall:

(a) Provide a written report, on Form KMH 104, to the office, the retailer, and the purchaser:

1. Approving the foundation construction; or

2. Specifying corrective action required in order to meet minimum standards for delivery of the home; and

(b) Not issue Form KMH 104 if the preinstallation inspection reveals nonconformity with an applicable standard.

(3) A retailer shall not set a home on a permanent foundation that does not comply with manufacturer's instructions.

(4) This administrative regulation shall not be construed to relieve any other person involved in the installation of the home from legal liability based upon that person's conduct.

(5) Postinstallation actions.

(a) The office shall order the retailer to take corrective action to bring a home into compliance if an inspection reveals that the home has been installed in violation of:

1. Minimum installation requirements; or

2. A contract of sale and Form KMH 101 that place responsibility on the retailer.

(b) A retailer failing to correct deficiencies ordered corrected by the office shall be subject to the sanctions authorized by KRS 227.630 and 227.640.]

Section 5.[4.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ANSI A225.1, Manufactured Home Installations",[,] 1994 Edition;

(b) "Form HBC MH-10, Consumer Protection Notice", August 2018[KMH 101, Consumer Protection Notice", September, 2007]; and

(c) "Form HBC MH-17 Site Preparation and Post Installation Guidelines", August 2018[KMH 102, Site Preparation", Foundation and Installation Guidelines, September, 2007];

(d) "Form KMH 104, Release for Delivery", September, 2007; and

(e) "Form KMH 105, Request for Inspection", September, 2007].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Housing, Buildings and Construction, Division of Building Code Enforcement[Fire Prevention], Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

#### PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction

Building Code Enforcement, Manufactured Housing Section

(As Amended at ARRS, November 13, 2018)

815 KAR 25:100. Alternative dispute resolution and mediation program.

RELATES TO: KRS 13B, 227.550, 227.640(4)[227.640(3)]

STATUTORY AUTHORITY: KRS 227.590(1),

227.640(4)[227.640(3)] [, 227.590(1)]

NECESSITY FUNCTION AND CONFORMITY: KRS

227.590(1) requires the Department of Housing, Buildings and Construction[department] to promulgate administrative regulations to effectuate the provisions of KRS 227.550 to 227.660. KRS 227.640(4)[227.640(3)] requires the department[office] to establish[provide for] a dispute resolution process that may be used prior to a formal hearing under KRS Chapter 13B.[KRS 227.590(1) requires the board to promulgate administrative regulations to effectuate the provisions of KRS 227.550 to 227.660. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than the executive director, as the head of the department.] This administrative regulation establishes a mediation process[the requirements] for dispute resolution [using the process of mediation].

Section 1.[Definitions. (1) "Board" is defined by KRS 227.550(1).

(2) "Certified installer" means an individual certified to install manufactured housing pursuant to 815 KAR 25:080.

(3) "Manufacturer" is defined by KRS 227.550(9).

(4) "Retailer" is defined by KRS 227.550(4).

Section 2. Establishment of the] Kentucky Manufactured Housing[Certification and Licensure Board] Mediation Program. The department[board] shall administer the Kentucky Manufactured Housing[Certification and Licensure Board] Mediation Program[to comply with KRS 227.640(3)].

Section 2.[3.] Eligibility for Mediation. (1) A consumer, applicant, or a licensee[manufacturer, certified installer, or retailer of manufactured housing whose application, certification, or license is] subject to disciplinary action under KRS 227.640, may request mediation prior to [the convening of] a formal hearing under KRS Chapter 13B.

(2) A request to mediate shall be submitted to the department in writing[and shall be submitted to the board].

Section 3.[(3) Upon receipt of the request to mediate, the board shall forward the request to the Office of the Attorney General.

Section 4.] Mediation Procedures. (1) Mediations shall be conducted by the Office of Administrative Hearings within the Public Protection Cabinet[the Attorney General mediators].

(2) Mediations shall be scheduled by the Office of Administrative Hearings within the Public Protection Cabinet at a time agreed upon by[the Attorney General after receipt of the written request to mediate and agreement to participate at times convenient for] all participants.

(3) The[scheduled] mediation may be rescheduled with written agreement[approval] off by all participants[participating parties].

(4) If the mediator initially assigned has a[documented] conflict of interest, the mediator, or the participants, shall request an alternate mediator from the Office of Administrative Hearings within the Public Protection Cabinet[within the Office of the Attorney General].

(5)[If it is determined that a conflict of interest exists between a party and the Office of the Attorney General's mediator, then a mediator shall be selected by the board from the roster maintained by the Administrative Office of the Courts.

(6)] Mediation shall proceed only if each participant is[all participants][parties][are] present and each party has[with] full settlement authority[are present]. The participants shall be responsible to ensure that all[It shall be the responsibility of the parties to have the] necessary persons are present at the mediation.

(6) [(7)] Participation in the mediation shall constitute an agreement by the participants[parties] that all offers of compromise, promises, or statements made in the course of the mediation shall not be offered at any subsequent hearing or trial relating to the subject matter of the dispute unless otherwise discoverable.

(7) [(8)] The content of the mediation shall remain confidential

as permitted by state and federal law.

~~(8)/(9)]~~ The mediator shall not be subject to participation or subpoena in subsequent proceedings regarding the matter mediated.

~~(9)/(10)]~~ Following successful mediation, an agreement shall be prepared at the direction of the mediator and executed[Final mediation agreements shall be prepared by the mediator and signed] by the participants/parties.

Section 4.[5-] Costs of Mediation. Cost of mediations conducted pursuant to this administrative regulation shall be divided equally among the participants[all parties participating in the mediation].

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 9 a.m.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email [david.startzman@ky.gov](mailto:david.startzman@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Electrical Division**  
**(As Amended at ARRS, November 13, 2018)**

**815 KAR 35:015. Certification of electrical inspectors.**

RELATES TO: KRS 198B.060, 198B.090, 211.350, 227.450, 227.480, 227.489, 227.491, 227.492, 227.495

STATUTORY AUTHORITY: KRS 198B.050(5), 227.489

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 198B.050(5) requires the department to promulgate administrative regulations to implement the Uniform State Building Code or to carry out any responsibility assigned to the department in accordance with KRS Chapter 198B.** KRS 227.489 requires the commissioner of the Department of Housing, Buildings and Construction to require[certify] electrical inspectors to be certified based on standards of the National Electrical Code. This administrative regulation establishes the procedures for achieving and maintaining a[the] certification as an electrical inspector.

Section 1.[Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Certified Electrical inspector" means a person who has:

(a) Met the requirements established in this administrative regulation; and

(b) Been issued a certificate by the department.

(3) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125.

(4) "Division" means the Electrical Division within the Department of Housing, Buildings and Construction.

(5) "Electrical" is defined by KRS 227.450(3).

(6) "Electrical industry" means the industry engaged in the generation, transmission, and distribution of electricity and the design, manufacture, construction, installation, alteration, or repair of electrical wiring, facilities, and apparatus for the utilization of electricity.

(7) "Commissioner" means the commissioner of the Department of Housing, Buildings and Construction.

(8) "Department" means the Department of Housing, Buildings, and Construction.

(9) "NCPCCI" means National Certification Program for Construction Code Inspectors, which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

Section 2.[ Applicability. This administrative regulation shall apply to[an] electrical inspectors[inspector] in Kentucky and applicants[te-an applicant] for certification as an electrical inspector in Kentucky.

Section 2.[3-] Classifications[Categories] of[Certified] Electrical Inspectors. (1) An[A-certified] electrical inspector shall be classified as either[an]:

(a) An electrical inspector one (1) and two (2) family shall be a person who has:

1. Passed an examination focused on electrical installations in one (1) or two (2) family dwellings with a score of seventy (70) percent or greater by a test provider approved by the department; and

2. At least four (4) years experience immediately preceding the application in the installation and design of residential wiring systems installed in accordance with the National Electrical Code, NFPA 70 incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125; or

(b) An electrical inspector general shall be a person who has:

1. Passed an examination focused on electrical installations in residential, commercial, and industrial buildings with a score of seventy (70) percent or greater by a test provider approved by the department; and

2. At least eight (8) years of experience immediately preceding the application in the installation and design of residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, NFPA 70, incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125.

(2) The requirements in subsections 1(a) and 1(b) shall be satisfied if the person is:

(a) A registered professional electrical engineer engaged in that profession for at least three (3) years immediately preceding the application; or

(b) Currently licensed as a master electrician and actively engaged in the electrical trade in that capacity immediately preceding the application.

(3)(a)[(2)] An electrical inspector one (1) and two (2) family shall be certified:

(a) ~~A person who has passed the NCPCCI 2A examination;~~ and

(b) Qualified to inspect and approve an electrical installation related to a:

1. One (1) or two (2) family dwelling; or

2. Manufactured home or mobile home.

(b)[(3)] An electrical inspector general shall be certified:

(a) ~~A person who has passed the NCPCCI 2B examination;~~ and

(b) Qualified to inspect and approve an electrical installation related to any type of residential, commercial, industrial, or other property that requires electrical inspection.

(4) A passing score as described in subsections (1)(a)1. and (1)(b)1. shall be valid for a period of three (3) years.

Section 4. Application Requirements for Certification. (1) An applicant for certification as an electrical inspector shall submit to the department:

(a) A completed Application for Electrical Inspector Certification on Form EL-11;

(b) Proof of successful completion of the examination applicable to the certification sought pursuant to Section 2(1)(a) and (b) of this administrative regulation;

(c) Except for electrical inspectors employed by the department, a fee of \$100 dollars payable to the Kentucky State Treasurer;

(d) Proof of the applicant's experience as required by Section 3(1)(a)2. and (b)2. of this administrative regulation;

(e) A passport-sized, color photograph of the applicant taken within the past six (6) months; and

(f) Proof of a bond in the amount of \$5,000 in compliance with KRS 227.487(4), unless employed by the department or a local government rules otherwise.

(2) An applicant shall~~1. Have at least five (5) years of~~

experience immediately preceding the application in the installation and design of all types of:

a. Residential wiring systems installed in accordance with the code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or

b. Residential, commercial, and industrial wiring systems installed in accordance with the code, if the applicant is applying for certification as an electrical inspector general;

2. Be a registered professional electrical engineer engaged in that profession for at least three (3) years immediately preceding the application; or

3. Be currently licensed as a master electrician and have been actively engaged in the electrical trade in that capacity immediately preceding the application;

(b) possess:

(a)[1-] The ability to read and write the English language; and

(b)[2-] A general educational level at least adequate to perform his or her duties.

(3) Proof of listed experience shall be provided by:

1. A federal or state tax form; or

2. An affidavit by another license holder who worked with the applicant.

(4) [ ]:

(c) Submit a completed Form EL-11, Application for Electrical Inspector Certification, which shall be:

1. Notarized; and

2. received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. Proof of successful completion of the NCPCCI examination applicable to the certification sought, as established by Section 3(2)(a) and (3)(a) of this administrative regulation;

2. Except as established by subparagraph 4. of this paragraph, a fee of \$100 dollars payable to the Kentucky State Treasurer;

3. A recent passport-sized, color photograph of the applicant taken within the past six (6) months; and

4. The fee established by subparagraph 2. of this paragraph shall not apply to an electrical inspector employed by the department.

(2) If an otherwise qualified applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his or her background in and familiarity with electrical construction through other means. The department with recommendations from the Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the applicant's qualifications are substantially equivalent to the experience requirements established in subsection (1)(a) of this section.

(3) An applicant shall receive credit [earned] for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(5) The department shall issue a certification for an electrical inspector only to an individual. A corporation, partnership, company, or other entity shall not be issued a certification.

Section 5. Certificate Renewal [Renewals of "General" and "One (1) and Two (2) Family" Certificates]. (1) Certification period.

(a) Each electrical inspector's certification shall expire on the last day of the electrical inspector's birth month each year.

(b) The department shall send each electrical inspector a renewal application form prior to the date of expiration [Certification shall:

(a) Be issued to an individual; and

(b) Not be issued to a corporation, partnership, company, or other entity].

(2) Filing for renewal. Each [applicant seeking to renew his or her] electrical inspector seeking certification renewal shall submit to the department [division]:

(a) A completed Application for Electrical Inspector Certification

on Form EL-11 [Electrical Inspector Certification Renewal Application on Form EL-12];

(b) A [The] renewal fee of fifty (50) dollars [required by subsection (5) of this section];

(c) Proof of compliance with the continuing education requirements established in 815 KAR 2:010 [Section 6(1) of this administrative regulation];

(d) If the electrical inspector [applicant] is employed by a local government [as an electrical inspector], documented proof of continued employment signed by the hiring authority responsible for administering the local jurisdiction's inspection and code enforcement program;

(e) For each local jurisdiction with which the applicant is contracted to act as an electrical inspector, a copy of the current contract naming the applicant and establishing the terms and conditions of his or her authority; and

(f) For each local jurisdiction with which the applicant is employed or contracted to act as an electrical inspector, a copy of the ordinance fixing the schedule of fees authorized to be charged for electrical inspections within that jurisdiction.

(3) Current information. [(a)] An applicant who has previously submitted a document required by subsection (2)(e) and (f) of this section for [in connection with] a prior renewal shall not be required to resubmit that document [with his or her application for renewal] if it remains current and effective at the time of the current renewal.

(4) Change of information. [(b)] Within ten (10) days of the occurrence, a [certified] electrical inspector shall provide the department [division]:

(a) [1-] Notice of any establishment, change, or termination of the electrical inspector's contract or employment with a local jurisdiction;

(b) [2-] A copy of any new or revised contract entered into [executed] with a local jurisdiction; and

(c) [3-] Notice of the termination of employment by a local government as an electrical inspector;

4. Notice of new employment by a local government as an electrical inspector, signed by the hiring authority responsible for administering the local jurisdiction's inspection and code enforcement program; and

5. For any local jurisdiction with which the electrical inspector is employed or contracted, a copy of any ordinance amending the schedule of fees authorized to be charged for electrical inspections within that jurisdiction.

(5) Late [(4)] Each electrical inspector certification shall expire on the last day of the inspector's birth month each year. The office shall mail each certified inspector, prior to the date of expiration, a renewal application form, and the certification shall be renewed subject to the provisions of this administrative regulation.

(5) A renewal fee of fifty (50) dollars shall be paid by each certified electrical inspector on or before the last day of the inspector's birth month in each succeeding year to maintain certification.

(6) Delinquent renewal fee].

(a) An [A certified] electrical inspector who fails to submit the renewal application and renewal fee [for renewal] on or before the last day of his or her birth month shall pay a late renewal [delinquent] fee of fifty (50) dollars in addition to the renewal fee.

(b) If both fees are not paid or [and] all required continuing education is not completed within sixty (60) days after the last day of the electrical inspector's birth month, the certification shall be terminated [canceled and shall not be renewed].

(6) [(7)] Reinstatement.

(a) A certificate that has been terminated [revoked or canceled] may be reinstated at the discretion of the commissioner upon a petition in writing, demonstrating just cause why the petitioner failed to comply [could not have complied] with the renewal requirements established by this section.

(b) [(8)] An applicant for reinstatement shall:

1. [(a)] Pay a reinstatement fee of \$100 in addition to the late renewal fee required by subsection (5) of this section;

2. [(b)] Comply with the requirements established by subsection (2) of this section;

3. a. [(c)] Pay the delinquent renewal fee required by [subsection



(6) of this section; and

(d)1.] Submit proof of required continuing education pursuant to 815 KAR 2:010 for the number of hours required in one (1) year[required by Section 6(1) of this administrative regulation for each year the certificate was revoked or cancelled]; or

b.2.] Submit proof of having passed the [NCPCC] examination applicable to the certification to be reinstated, as established by Section 2(1)(a) and (b)[Section 3(2)(a) and (3)(a)] of this administrative regulation, within the current year.

(7)[(9)] The requirements of this section shall not apply to a state-employed electrical inspector.

Section 6. Duties and Responsibilities [of a Certified Electrical Inspector]. (1)[Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the department with advice from the Electrical Advisory Committee in accordance with the requirements established by 815 KAR 35:100.

(2) Each electrical inspection shall be conducted in a manner to verify compliance with the code, the Kentucky Building Code as adopted and incorporated by reference in 815 KAR 7:120, the Kentucky Residential Code as adopted and incorporated by reference in 815 KAR 7:125, and the Kentucky Standards of Safety as adopted and incorporated by reference in 815 KAR 10:060.

(3)] In addition to the National Electrical Code[code], the electrical inspector shall be familiar with all[the] applicable building codes and fire safety codes governing buildings in the area in which the electrical inspector performs an inspection[to determine the occupancy load of a facility].

(2) Record retention.

(a)[(4)] The electrical inspector shall make an inspection upon request of the electrical contractor.

(5) The electrical inspector shall comply with the requirements of 815 KAR 35:020.

(6)(a) A temporary construction service approval shall receive a green sticker and a certificate of approval.

(b) For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval or otherwise release the property for the supply of electricity until he or she has received the local health department's "Initial Notice of Release" (Notice of Release for Temporary Electrical Service, Form PHPS-001) and has recorded its number upon the certificate of approval.

(7) Except for manufactured homes, the electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his or her signature and certification number on the main service equipment or at some other appropriate location.

(b) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

(c) Upon final approval of an electrical installation, the inspector shall:

1. Attach a green sticker to the main service equipment:

a. With his or her signature and certification number, name of the project, and location; and

b. Stating that the system has been inspected for compliance with the code; and

2. Provide the owner or the owner's agent with a certificate of approval. For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval or otherwise release the property for the supply of electricity until he or she has received the local health department's "Final Notice of Release" (Notice of Release for Permanent Electrical Service, Form PHPS-002) and has recorded its number upon the certificate of approval.

(8) A red, yellow, or green sticker or a certificate of approval to be used by the electrical inspector shall be of a type and format issued or approved by the department.

(9)] Each electrical inspector shall make[and retain for a

minimum of ~~three (3) years~~] a complete record of each inspection[and make it available to the department upon request]. The record shall contain, as a minimum:

1.[(a)] Sufficient information to identify the location of the structure inspected;

2.[(b)] The date of the inspection;

3.[(c)] The type of structure, whether residential, commercial, industrial, or other;

4.[(d)] The designation of a required permit and the agency granting the permit;

5.[(e)] The size and complexity of the structure; and

6.[(f)] Any deficiencies in meeting code requirements and the actions[action] required to comply.

(b) If the electrical inspector is employed by a local government, the electrical inspector or the local government shall maintain the records in compliance with 725 KAR 1:061.

(c) If the electrical inspector contracts with a local government, the local government shall maintain the records in compliance with 725 KAR 1:061.

(d) If the electrical inspector is an employee of the department, the electrical inspector shall submit the reports to the department in compliance with KRS 227.487(1)[(40) Violation of KRS 211.350(8) by a certified electrical inspector shall constitute misconduct].

Section 7. Complaints and Grievance Procedures. (1) A person may file a complaint against an[a certified] electrical inspector if the person believes that an act or omission of the electrical inspector in the performance of his or her duties is in violation of this administrative regulation or other law or has caused an undue hardship to the person.

(2) A complaint or allegation of misconduct shall be submitted in writing to the department[commissioner] and shall:

(a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates, and witnesses; and

(b) Specify the action requested of the of the department[commissioner].

(3) Following an investigation, the department[commissioner] shall:

(a)[Cause the matter to be heard and a recommendation rendered by the Electrical Advisory Committee;

(b)] Set the matter for public hearing; or

(b)[(e)] Take other appropriate action in accordance with KRS 227.495 to resolve or correct the matter.

Section 8. Suspension and Revocation of Certification. The commissioner shall revoke, suspend, or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after having afforded the opportunity for a KRS Chapter 13B administrative hearing, to have:

(1) Engaged in an activity that constitutes a conflict of interest, including:

(a) Work as an electrical contractor or electrician;

(b) Involvement in an activity in the electrical industry; or

(c) Having a pecuniary or associational interest in a business or other venture involved in an activity in the electrical industry;

(2) Engaged in fraud, deceit, or misrepresentation in obtaining certification;

(3) Demonstrated[Been guilty of] negligence, incompetence, or misconduct in the field of electrical inspection;

(4) Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to inspection if he or she has not personally inspected the installation and found it to be satisfactory in accordance with the code;

(5) Operated as an electrical inspector in a locality in conflict with state or local laws, ordinances, or regulations;

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule, or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the designated electrical inspector's office supervising the original electrical inspector;

(7) Failed to maintain accurate and adequate recordkeeping as required by Section 6 of this administrative regulation;

(8) Violated KRS 211.350(8); or

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~~(9)[(8)]~~ Violated any provision of KRS 227.491 or this administrative regulation.

~~Section 9.[Electrical Inspections by State-Employed Certified Electrical Inspectors. (1) State-owned property, including each building being constructed by the state under the authority of the Finance and Administration Cabinet, shall be inspected by a certified electrical inspector who is an employee of the state.~~

~~(2) A state-employed certified electrical inspector shall inspect any electrical work subject to inspection within a local jurisdiction if a certified electrical inspector has not been made available by the local government.~~

~~(3) A state-employed certified electrical inspector shall assert jurisdiction for the electrical inspection of a project subject to state plan review pursuant to Kentucky Building Code, 815 KAR 7:120.~~

~~(4) A state-employed certified electrical inspector may inspect a state leased facility that is not otherwise subject to state inspection pursuant to this section, upon request.~~

~~Section 10. Interpretations. If a provision of the code is shown to be unreasonable or impractical as applied to a particular installation, and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the Electrical Advisory Committee of the Department of Housing, Buildings and Construction to request a modification to the code. Upon advice from the committee, the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction in accordance with KRS 198B.070 and the Kentucky Building Code, 815 KAR 7:120, or Kentucky Residential Code, 815 KAR 7:125.~~

~~Section 11.] Incorporation by Reference. (1) Form EL-11, "Application for Electrical Inspector Certification", August 2018 is incorporated by reference[The following material is incorporated by reference:~~

~~(a) Form EL-11, "Application for Electrical Inspector Certification", May 2015, Department for Housing, Buildings and Construction;~~

~~(b) Form EL-12, "Electrical Inspector Certification Renewal Application", May 2015, Department for Housing, Buildings and Construction;~~

~~(c) Form PHPS-001, "Notice of Release for Temporary Electrical Service", May 1998 Edition, Department for Public Health; and~~

~~(d) Form PHPS-002, "Notice of Release for Permanent Electrical Service", May 1998 Edition, Department for Public Health].~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.~~

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

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**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Electrical Division**  
**(As Amended at ARRS, November 13, 2018)**

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

RELATES TO: KRS 164.772(3), 227A.010, 227A.060,

227A.100, 339.230, 29 C.F.R. 570

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040(8) authorizes[and 227A.060 authorize] the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure[a process for the licensing] of electrical contractors, master electricians, and [master] electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and[master] electricians.

Section 1. ~~Initial~~[Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

~~(1) Complete an application as required by Section 2 of this administrative regulation;~~

~~(2) Pay the application fee required by Section 3 of this administrative regulation;~~

~~(3) Provide verifiable evidence of experience and training as established in Section 4 of this administrative regulation; and~~

~~(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.~~

Section 2.] Application Requirements. (1) Filing the application.

(a) Electrical contractor. An[The] applicant seeking an electrical contractor's license shall submit to the department:

1. A completed[complete an application form, either] Electrical Contractor's License Application, Form EL-2;

2. An application fee of \$200 for a twelve (12) month license;

3. The name and license number of the master electrician affiliated with the applicant; and

4. Proof of insurance as required by KRS 227A.060(1)(c).

(b) Master Electrician. An applicant seeking a master electrician license shall submit to the department:

1. A completed[Form BCE-EL-2, or] Electrical License Application, Form EL-3;

2. An application fee of \$100 for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 227A.060(2)(b) and this administrative regulation.

(c) Electrician. An applicant seeking an electrician license shall submit to the department:

1. A completed Electrical License Application, Form EL-3;

2. An application fee of fifty (50) dollars for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 227A.060(3)(b) and this administrative regulation.

(d) The application fees may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

(2) Photograph requirement. All electrical license applicants shall submit a passport-sized color photograph of the applicant taken within the past six (6) months[Form, BCE-EL-3, which shall include:

(a) The applicant's name;

(b) The applicant's home address;

(c) The applicant's business address;

(d) The applicant's home and business telephone numbers;

(e) The applicant's date of birth;

(f) The applicant's Social Security number or employer identification number;

(g) The applicant's email address;

(h) The licenses applied for;

(i) For master electrician or electrician, a narrative listing of the applicant's experience in the electrical industry, including:

1. Business name and address;

2. Job title; and

3. Supervisor's name;

(j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;

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~~(k) a statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);~~

~~(l) A passport-sized color photograph of the applicant taken within the past six (6) months;~~

~~(m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and~~

~~(n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage].~~

(3) Voiding of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of one (1) year, the application shall be void.

Section 2. Reciprocity. [(2)] An applicant for reciprocity shall:

(1)[(a)] Comply with:

(a) The requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(b) The general application requirements in Section 1(2) of this administrative regulation;

(2) Provide:

(a)[and

(b) Submit a completed Reciprocity Electrical License Application, Form BCE-EL-4, which shall include:

1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

2. A passport-sized color photograph of the applicant taken within the past six (6) months;

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and

4.] A copy of the applicant's license from the participating state;

(b) A letter of good standing from the licensing authority of the state in which the applicant is currently licensed; and

(3) If applying for an electrical contractor's license, proof of insurance as required by KRS 227A.060(1)(c).

Section 3. [Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

(a) \$200 for an electrical contractor's license;

(b) \$100 for a master electrician's license; or

(c) Fifty (50) dollars for an electrician's license.

(2) Application, renewal, reinstatement, and late fees shall not be refundable.

(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.

(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee for that year.

Section 4.] Verification of Experience. (1) Records of experience. Proof of experience shall be provided by: [An applicant shall submit verification of experience for licensure as a master electrician or electrician.

(2) Verification shall be submitted in the form of:]

(a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form 1040 [Form W-2,] Form 1099, or local occupational tax returns;

(b) A copy of a business license issued by a county or

municipal government that did not issue electrical contractors, master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician for at least one (1) of the following:

1. An electrical workers union;

2. A certified electrical inspector; or

3. An employer that employed the applicant as an electrician or a master electrician; or

(d) Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

(2) An applicant for a master electrician license or electrician license attending an accepted electrical training program in accordance with 815 KAR 35:090 shall provide the following with his or her application:

(a) An affidavit from the director or authorized agent of the electrical training program confirming the applicant's participation in the electrical training program; and

(b) Documentation that the applicant has completed the required number of hours in accordance with 815 KAR 35:090.

(3) Additional proof of experience shall be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient or nonexistent.

(4)[(3)] One (1) year of electrical experience shall consist minimally of 1,600 hours of electrical work in a contiguous twelve (12) month period.

Section 4.[5.] Examinations. (1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider.

(2) A passing score shall be valid for a period of three (3) years.

(3) Reasonable accommodations shall be made to provide accessibility to disabled applicants, upon request.

(4)[(2)] For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:

(a) An owner of the applicant's business;

(b) An officer of the applicant's business;

(c) A director of the applicant's business; or

(d) A full-time employee of the applicant's business.

(5)[(3)(a) If a person designated by an entity as established in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the examination; or

2. Successfully passes the examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(4)] Upon application by a testing agency, a national code group, or by an applicant for licensure [certification], the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 5.[6.] Appeal Procedure. (1) An applicant denied a license may appeal the decision to the commissioner of the department [of Housing, Buildings and Construction]. The applicant shall submit written notice of the appeal to the department [of Housing, Buildings, and Construction] within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the commissioner of the

department[~~of Housing, Buildings, and Construction~~].

Section 6.[7-] Proof of Insurance. (1) ~~An electrical contractor's insurance policy shall name [An applicant for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least \$500,000 issued by an insurer authorized to do business in Kentucky and naming] the department[~~of Housing, Buildings, and Construction, Electrical Licensing,~~] as the certificate holder.~~

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an ~~[approved]~~ insurance provider ~~approved by~~[with] the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Each electrical contractor shall require the contractor's liability and workers' compensation insurers to provide notice to the department~~[of Housing, Buildings, and Construction]~~ if a policy:

(a) Is cancelled, terminated, or not renewed; or

(b) Limit is lowered.

(4) An electrical contractor shall advise the department~~[of Housing, Buildings, and Construction]~~ of a:

(a) Change in the contractor's insurance coverage, including cancellation or termination of any policy;

(b) Change in the insurer providing the coverage; or

(c) Changed circumstances that require the contractor to obtain coverage.

Section 7. Inactive License Status. (1) A licensee may request that a license be placed in inactive status.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the department of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) A licensee shall not perform electrical work while the license is inactive. Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 8. Renewal Requirements. (1) A license shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2) Filing for renewal. An electrical contractor, a master electrician, or an electrician shall submit to the department:

(a) A completed form:

1. Electrical Contractor's License Application, Form EL-2 for an electrical contractor; or

2. Electrical License Application, Form EL-3 for a master electrician and electrician;

(b) A renewal fee of:

1. \$200 for an electrical contractor;

2. \$100 for a master electrician; and

3. Fifty (50) dollars for an electrician;

(c) Proof of annual continuing education attendance in accordance with 815 KAR 2:010; and

(d) Proof of insurance as required by KRS 227A.060(1)(c) and this administrative regulation for an electrical contractor.

(3)(a) A license that is in inactive status shall be exempt from annual renewal.

(b) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010.

(4)(a) A licensee who applies for reissuance of a license pursuant to 2018 Ky. Acts ch. 186, sec. 2 shall submit to the department:

1. A completed:

a. Electrical Contractor's License Application, Form EL-2 for an electrical contractor; or

b. Electrical License Application, Form EL-3 for a master electrician and electrician;

2. Proof of licensure as described in 2018 Ky Acts ch. 186, sec. 2;

3. A reissuance fee of \$100; and

4. Proof of insurance as required by KRS 227A.060(1)(c) and this administrative regulation for an electrical contractor.

(b) The reissued license shall be valid for one (1) year from the date of issuance. The reissued license holder shall obtain a full license if the reissued license holder passes the corresponding license examination pursuant to Section 4 of this administrative regulation.

(c) If the individual with the reissued license fails to take and pass an examination within one (1) year of reissuance, the department shall terminate the license.

(6) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal. The Department of Housing, Buildings, and Construction shall issue an initial license to an applicant for a period of up to twenty-three (23) months and shall charge a pro rata initial license fee to reflect the actual term of the initial license. An initial license shall not be issued for less than a twelve (12) month period.

(3) A licensee shall apply for license renewal on Electrical License Renewal Application, Form BCE-EL-5].

Section 9. Reinstatement and Late Fees. (1) Application, renewal, reinstatement, and late fees shall not be refundable.

(2) The reinstatement fee for a terminated license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(3) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and a late fee shall not be assessed.

Section 10. Change of information. (1) An electrical contractor and a master electrician shall notify the department of any change to the name of the electrical contractor's or master electrician's business and its address, employer, and the employer's address each time a change of employment is made.

(2)(a) Except as stated in subsection (3) of this section, if an electrical contractor designated by an entity as established in Section 4(4) of this administrative regulation leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the electrical contractor's examination; or

2. Successfully passes the electrical contractor's examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(3) Death of an electrical contractor or master electrician.

(a) If the electrical contractor or master electrician representing a company dies, the company shall notify the department within ten (10) days of the electrical contractor's or master electrician's death.

(b) The 180 day interim period established in KRS 227.480 and KRS 227A.140 shall begin on the date the electrical contractor or master electrician dies.

(c) The company shall not be required to renew the deceased's electrical contractor or master electrician license, if the license renewal date falls within the 180 day interim period.

(d) The company shall not use the deceased electrical contractor's or master electrician's license after the expiration date of the interim period.

(e) The company shall notify the department when the company has a replacement electrical contractor or master

electrician to represent the company on or before the expiration date of the interim period[Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Department of Housing, Buildings, and Construction of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee].

Section 11. Provisional License. (1) Application. An applicant seeking a provisional electrician license shall submit to the department:

(a) A completed Provisional Electrical License Application Form, EL-14;

(b) An application fee of fifty (50) dollars;

(c) A passport-sized color photograph of the applicant taken within the past six (6) months; and

(d) Proof of the applicant's experience as established by KRS 227A.060(4)(a)2.

(e) The proof requested in paragraph (d) of this subsection shall be satisfied with the documents listed in Section 3(1) of this administrative regulation.

(2) Responsibilities. A provisional electrician license holder shall have the same rights and responsibilities as an electrician licensed pursuant to KRS 227A.060(3) and this administrative regulation.

(3) Termination.

(a) A provisional electrician license shall be valid for one (1) year from the date of issuance. The provisional electrician license shall immediately terminate on the date of the one (1) year anniversary of the issuance of the provisional electrician license.

(b) The provisional electrician license holder shall no longer have the rights and responsibilities of an electrician licensed pursuant to KRS 227A.060(3) and this administrative regulation. The provisional electrician license holder shall revert to the individual's unlicensed status as before the issuance of the provisional license.

Section 12.[40.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[Form BCE-EL-2,] "Electrical Contractor's License Application", Form EL-2, ~~November~~August 2018[March, 2007 edition];

(b)[Form BCE-EL-3,] "Electrical License Application", Form EL-3, ~~November~~August 2018[May 2011 edition]; and

(c) "Provisional Electrician License Application, Form EL-14, ~~November~~August 2018[Form BCE-EL-4, "Reciprocity Electrical License Application," August 2009 edition; and

(d) Form BCE-EL-5, "Electrical License Renewal Application", August 2009 edition].

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**PUBLIC PROTECTION CABINET  
Department of Charitable Gaming  
(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:001. Definitions[for 820 KAR Chapter 1].**

RELATES TO: KRS 238.500, et. seq.[- 238.995]

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(9)] authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the purposes and intent[provisions] of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Account number" means the unique identification number, if any, assigned by a card-minding device system or electronic pulltab system to a customer that uses a card-minding device to play bingo or an electronic pulltab device to purchase and play a pulltab.

(2) "Bet block" means an area that indicates the dollar amount of the wager.

(3) ["Bingo ball" means a ball imprinted with numbers and letters which is used in the selection process of a bingo game.

(4) "Bingo machine" means:

(a) A type of selection device with a receptacle for the unselected bingo balls, a blower for selecting the balls, and a ball tray that contains seventy-five (75) holes in which to place the ball once it is called; or

(b) A generator that randomly selects the balls and displays them on the face of the device.

(5) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit.

(6) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by an organization for sale at a gaming occasion that becomes a unique item for sale with a specific price.

(7) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.

(8) "Break open bingo" means a bingo game in which the numbers on the face are hidden until after purchase.

(9) "Bundle" means to price a certain amount of bingo paper faces for a certain price with the patron choosing the type of packs that make up the total faces.

(10) "Called" means that a number located on a bingo ball has been:

(a) Selected by the selection device;

(b) Verbally announced by the caller;

(c) Displayed on the flashboard or other device; and

(d) Placed in a ball tray or otherwise continuously displayed until completion of the bingo game.

(11) "Cash" means currency, coinage, or a negotiable instrument.

(12) "Cash over" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session [gaming occasion] is more than the amount of money due from the sale of that quantity of gaming supplies.

(4)[(13)] "Cash short" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session[gaming occasion] is less than the amount of money due from the sale of that quantity of gaming supplies.

(5) "Charitable gaming session" means a single gathering, event, or occurrence, at a specific location, during a specific time period, at which games of chance as defined by KRS Chapter 238 are conducted by a charitable organization.

(6) "Charitable gaming session program" means a written list of all games to be played and prize amounts to be paid for each game during a charitable gaming session, including, if the prizes are based on attendance, the amount of the prize and the



attendance required.

(7)[(44)] "Chief executive officer" means the director of the organization or the person who has legal authority to direct the management of the organization, distributor, manufacturer, or charitable gaming facility with respect to the conduct of charitable gaming.

(8)[(45)] "Chief financial officer" means the person who is[shall be]:

(a) Responsible for overseeing the financial activities of the organization, distributor, manufacturer, or charitable gaming facility;

(b) The custodian of the charitable gaming session[gaming occasion] records; and

(c) Responsible for ensuring that all[the] records are accurate, complete, and maintained [regularly for inspection by the department.

(16) "Conditioning" means a restatement of:

(a) How many numbers or combinations of numbers are being selected by the players;

(b) The way [in which the] numbers are being wagered; and

(c) The corresponding dollar amount wagered.

(17) "Continuation game" means a multipart bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.

(18) "Covered" means daubed or smeared with indelible ink if using a disposable paper bingo face, or marked electronically if using a card-minding device.

(19) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(20) "Deal" or "game set" means each separate game or series of pulltabs, including electronic pulltabs, which has the same serial number and which may be composed of multiple packages.]

(9)[(24)] "Digital signature" means a method by which data, as in a software application, is expressed in a calculated number that[which] is used to verify the accuracy of the data or a copy of the data. [(22) "Disposable paper bingo face" means a nonreusable bingo face assembled in a single sheet, multiple face sheet, pad, or pack form.]

(10)[(23)] "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected. [(24) "Electronic pulltab" means an electronic version of a paper pulltab that is distributed from a finite number of game outcomes by a central computer system and played on an electronic pulltab device.

(25) "Electronic pulltab system" means:

(a) A central computer system, which may be an optional site system;

(b) Electronic pulltab devices;

(c) Point of sale stations;

(d) Secondary components; and

(e) Proprietary software that contains reporting and control functions as specified by 820 KAR 1:033, whereby the central computer system communicates with the electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels.]

(11)[(26)] "EPROM" means Erasable Programmable read-only memory[ROM]. [(27) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab.

(28) "Exception log" means a record documenting a prize payout that has not been authorized by the computer.

(29) "Face" means a paper or an electronic representation containing:

(a) Five (5) rows of five (5) squares with numbers or symbols;

(b) A free center space;

(c) The letters "B", "I", "N", "G", "O" printed in order over the

five (5) columns; and

(d) A unique perm number identifying each face.

(30) "Fixed base card-minding device" means a computer system, not necessarily manufactured by a licensed manufacturer, which has been loaded with proprietary software by a licensed manufacturer to enable it to function as a card-minding device.

(31) "Fixed-base electronic pulltab device" means a single personal computing device which has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device.

(32) "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the payout structure, and other information as set forth by 820 KAR 1:032, 820 KAR 1:033, and 820 KAR 1:036.

(33) "Flashboard" or "display board" means a board that displays the bingo numbers called.

(34) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.]

(12)[(35)] "Gambling" is defined by KRS 528.010(4). [means staking or risking something of value on the outcome of a contest, game, gaming scheme, or gaming device which:

(a) Is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value if there is a certain outcome; and

(b) Does not include a contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill.

(36) "Game set" means the entire deal of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number.

(37) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(38) "Gaming occasion" means an event at which charitable gaming takes place, such as a bingo session, a charity fundraising event, a special limited charity fundraising event, a sale of pulltabs, or a sale of raffle tickets.

(39) "Gaming occasion program", "bingo program", "occasion program", or "program" means a written list of all games to be played and prize amounts to be paid for each game during a gaming occasion, including, if the prizes are based on attendance, the amount of the prize and the attendance required.

(40) "Hand-held card-minding device" means a hand-held computer that is either manufactured or customized by the manufacturer to operate as a card-minding device.

(41) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device, that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.]

(42) "Hard card" means a reusable card bearing a bingo face or faces.

(43) "Inside ticket" means a blank Keno ticket:

(a) Constructed with eighty (80) blocks numbered one (1) through eighty (80); and

(b) Containing a bet block.

(44) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes which is carried over from deal to deal, or game set to game set, until it is won.

(45) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(46) "Keno" means a numbers game in which:

(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and

(b) The winner and the prize is determined by correctly matching the participant's numbers to the twenty (20) numbers generated in the game.

(47) "Keno equipment" means:

(a) An electronic selection device;

(b) A random number generator;

(c) A computerized Keno system; or

(d) An integrated system of computer hardware and software

that:

1. Generates a player ticket;
2. Records a game outcome;
3. Verifies a winning ticket;
4. Produces a management report; or
5. Performs other internal audit controls of a Keno operation.

(48) "Keno manager" means the person in charge of the operation of the Keno game.

(49) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.]

(13)[(60)] "Merchandise prize" means a noncash prize given away at a charitable gaming session[event] either as a game prize or a door prize. [(51) "Model number" means the name or number designated by the manufacturer that indicates the unique structural design of a hand-held card-minding device, fixed base card-minding device, card-minding system component, hand-held electronic pulltab device, fixed base electronic pulltab device, or any element of an electronic pulltab system.

(52) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000 tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(53) "Multirace ticket" means a single Keno ticket that allows a player to make the same wager on consecutive games.

(54) "Outside ticket" means a computer-generated Keno ticket given to the player which reflects game and wagering information.

(55) "Perm number" means the number located on a bingo face that identifies the unique pattern of numbers appearing on that face.

(56) "Pickle jar, bonanza ball, or hot ball" means games played in conjunction with other bingo games in which:

(a) A bingo ball is selected by the selection device prior to the start of certain bingo games or all bingo games; and

(b) A patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball, if the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played.

(57) "Player pick bingo" means that the patron picks the numbers which constitute a bingo on his or her face or faces and a machine prints those numbers on the bingo face at the gaming occasion before the game is played.]

(14)[(58)] "Player tracking software" means computer software installed on a card-minding device system, electronic pulltab system, or other point of sale system that is used to identify or track certain characteristics of bingo or pulltab players, including personal data and purchasing habits. [(59) "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo occasion if no player wins at that session.

(60) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.]

(15)[(61)] "PROM" means programmable read-only memory[ROM].

(16)[(62)] "Promotional" means any item available at no charge to all participants at an charitable gaming session[event].

(17)[(63)] "Proprietary software" means custom computer software developed by the manufacturer that is a primary component of a card-minding device system or electronic pulltab system and is required for a card-minding device to be used in a game of bingo or for an electronic pulltab device to be used to play an electronic pulltab. [(64) "Pulltab" means a charity game ticket as defined by KRS 238.505(5).]

(18)[(65)] "Purchased prize" means any merchandise prize that was purchased and not donated. [(66) "Quick pick" means a number selection made for the player by a computer.]

(19)[(67)] "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(20)[(68)] "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software. [(69) "ROM" or "read-only memory" means the electronic component used for storage of nonvolatile information in Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on and may be either "PROM" or "EPROM".]

(21)[(70)] "Secondary component" means an additional software or hardware component that:

(a) Is part of or is connected to a card-minding device system or electronic pulltab system;

(b) Does not affect the conduct of the game of bingo or an electronic pulltab;

(c) Is provided by the manufacturer; and

(d) May include computer screen backgrounds, battery charge-up software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, or charging racks. [(71) "Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(72) "Selection device" means a device that:

(a) May be operated manually or automatically; and

(b) Is used to randomly select bingo numbers.

(73) "Selection pool" means the bingo numbers in a selection device that have not been selected.]

(22)[(74)] "Serial number" means a number assigned by the manufacturer to track the individual product. [(75) "Series number" means the number of unique faces contained in a series.

(76) "Set" means a case or cases of paper that contain one (1) of each face in a series.]

(23)[(77)] "Site system" means computer hardware, software, and peripheral equipment leased or purchased from a licensed distributor and used by a licensed organization to conduct, manage, and record bingo games played on card-minding devices and electronic pulltab games played on electronic pulltab devices.

(24)[(78)] "Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device or a specific electronic pulltab device.

(25)[(79)] "Transaction log" means a record of the same information printed on each outside ticket that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer. [(80) "Verification system" means a book of bingo faces compiled by the manufacturer or an electronic device created by the manufacturer that:

(a) Lists the unique patterns of numbers on each face by perm number; and

(b) Is used to verify the authenticity of a winning face.]

(26)[(81)] "Version number" means a unique number designated by the manufacturer to identify a specific version of software used on or by the card-minding device system or the electronic pulltab system. [(82) "Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

(83) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(84) "Year" is defined by KRS 238.505(25).]

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, COMMISSIONER

DAVID A. DICKERSON, SECRETARY

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Charitable Gaming**  
**(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:005. Charitable gaming licenses and exemptions[Exempt Organizations].**

RELATES TO: KRS 238.515, 238.525, 238.530, 238.535, 238.540, 238.555

STATUTORY AUTHORITY: KRS 238.515[(3), (9)], 238.525, 238.530, 238.535(2), (13), 238.555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(1) requires the Department of Charitable Gaming to license charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming. KRS 238.515(2) ~~authorizes~~**[requires]** the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This administrative regulation establishes the requirements, fees, and procedures for licensure of a qualifying charitable organization, distributor, manufacturer, or charitable gaming facility. This administrative regulation ~~establishes~~**[further lays out]** criteria for temporary licenses, exemptions, and inspections for verifying the information contained in an application. ~~[KRS 238.535(2) authorizes issuance of an exemption from licensing requirements to organizations meeting all licensing requirements if no special limited charitable games are played and annual gross receipts do not exceed \$25,000. KRS 238.535(2) requires charitable organizations to complete a form notifying the department of its exemption and requires completion of an annual financial report. This administrative regulation establishes the requirements for filing for an exemption and the annual reporting requirements.]~~

Section 1. Application for Licensure. (1) At least sixty (60) days prior to the expiration of its existing license or its first expected date of gaming, facility operation, or business operations in Kentucky during the license period, an applicant shall submit the appropriate complete, accurate, and documented application:

(a) A charitable organization shall submit Form CG-1;

(b) An organization authorized to hold special event raffles pursuant to KRS 238.535(14)(b) shall submit Form CG-SER;

(c) A distributor shall submit Form CG-2;

(d) A manufacturer shall submit Form CG-3; **and**

(e) A charitable gaming facility shall submit Form CG-4.**[;]**

(2) The department shall review the application and notify the applicant in writing of any deficiencies in the application as soon as practicable. An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request, provide requested information and documents, or otherwise cure the identified deficiency within thirty (30) days of the written notice, the application shall be deemed withdrawn.

(4) If the applicant ~~files~~**[does file]** a written response to a deficiency request within thirty (30) days of the written notice, but the response does not cure the identified deficiency, the department shall issue a subsequent deficiency notice. If the deficiency is incapable of being cured, the department shall deny the license.

(5) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days of receipt.

Section 2. License Requirements, Fees, and Issuance. (1) The department shall issue a license if the applicant has:

(a) Met the statutory requirements ~~established~~**[as set forth]**:

1. For charitable organizations, by KRS 238.535;

2. For special event raffle organizations, by KRS 238.535(14)(b);

3. For distributors and manufacturers, by KRS 238.530; **or**

4. For charitable gaming facilities, by KRS 238.555;

(b) Paid all fees and fines;

(c) Filed all required reports;

(d) Filed an acceptable financial plan, if required;

(e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms; and

(f) Submitted fingerprints cards as required by KRS 238.525.

(2) Fees for licenses issued shall be paid according to the following schedule:

(a) A nonrefundable application fee of twenty-five (25) dollars shall accompany each application for licensure and shall be credited against the amount of the annual license fee, if the requested license is granted.

(b) For charitable organizations and organizations licensed pursuant to KRS 238.535(14)(b):

1. \$100 for:

(i) A charitable organization upon initial application; or

(ii) A charitable organization with gross receipts not in excess of \$100,000;

2. \$200 for a charitable organization with gross receipts over \$100,000, but not in excess of \$250,000; or

3. \$300 for a charitable organization with gross receipts over \$250,000.

(c) For manufacturers or distributors: \$1,000.

(d) For charitable gaming facilities:

1. \$1,250 for a facility conducting eight (8) or fewer sessions per week; **or**

2. \$2,500 for a facility conducting between nine (9) and eighteen (18) sessions per week.

(3) A license shall not be issued until the license fee and any other fees or fines due are paid in full.

(4) The license term shall be for one (1) year from the effective date of the license.

(5) A licensed charitable organization, distributor, manufacturer, or charitable gaming facility may submit a written change request to change any information contained in the license application or printed on the license. All change requests shall be accompanied by a twenty-five (25) dollar change fee and be signed by an officer. The department shall process change requests and issue or deny an amended license within ten (10) days of receipt, and the licensee shall not engage in gaming until a license reflecting the change request has been issued.

(a) Except as provided in KRS 238.535(12)(b)(2), a licensed charitable organization may change the date, time, or location of a charitable gaming session if the licensed charitable organization submits a written request to the department at least ten (10) days prior to the date of the requested change. Any change request made pursuant to this subsection must be accompanied by a lease, if required, for the new gaming location.

(b) If a charitable organization wishes to cancel a charitable gaming session, the organization shall notify the department, in writing, at least twenty-four (24) hours prior to the scheduled start of the charitable gaming session, except in the event of an emergency beyond the organization's control, in which case the organization shall notify the department of the change as soon as practicable. A cancellation shall not require a change fee.

Section 3. Temporary License. (1) Application for Licensure. The department may issue a temporary license to an applicant for a charitable gaming license if the applicant has submitted a complete and accurate license application form, and has complied with all other licensing requirements for an annual license.

(2) License Fee. For each temporary license issued, the licensee shall pay a twenty-five (25) dollar fee. The total temporary license fee charged in a year shall not exceed the annual license fee.

Section 4. Distributor Requirements. (1) **For the operation of a distributorship**, a distributor shall maintain a separate bank account~~[for the operation of the distributorship]~~ that is not commingled with a personal account or another business account. If the ~~licensed~~**[license]** distributor owns multiple distributorships, a separate bank account shall be maintained for each distributorship.

(2) Any payments received by a distributor from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

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(3) A distributor or its agent ~~[(s)]~~ shall maintain storage facilities within this state for gaming supplies to be sold within the Commonwealth of Kentucky ~~[within this State]~~, and shall identify the facilities' physical locations to the department. Storage facilities shall be made accessible to the department for inspection upon request.

Section 5. Charitable Gaming Facility Requirements. (1) A licensed charitable gaming facility shall be permitted to list on its website the names, license numbers, gaming sessions, and information regarding the charitable organizations that game at that licensed charitable gaming facility.

(2) If a charitable organization contracts with a licensed charitable gaming facility to operate ~~a~~ concession stand ~~[(s)]~~, the members of the charitable organization that volunteer at the concession stand may volunteer to work for their own gaming session, but shall not volunteer for the gaming session of any other charitable organization that games at that licensed charitable gaming facility.

(3) For a licensed gaming facility operation, a licensed gaming facility shall maintain a separate bank account ~~[for the licensed gaming facility operation]~~ that is not commingled with a personal account or another business account. If the licensee owns multiple licensed gaming facilities, a separate bank account shall be maintained for each licensed gaming facility. If separate businesses are operated out of the licensed gaming facility, including a check cashing service or a concession stand, each business shall have a separate bank account.

(4) Any payments received by a licensed gaming facility from a charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account of the charitable organization.

(5) The lease agreement executed between the licensed charitable gaming facility and charitable organization shall contain the day and time of each charitable gaming session a charitable organization will conduct at the licensed gaming facility ~~[If the day and time are included in the lease agreement,]~~ The day and time listed in the lease agreement shall be accurate and shall match the day and time listed on the organization's charitable gaming license.

Section 6. Exempt Organizations. (1) An organization seeking exemption from charitable gaming licensing requirements shall submit a complete and accurate Form CG-Exempt, Organization Grossing Under \$25,000 Application for Exemption, at least thirty (30) days prior to the expected date of gaming. The Form CG-Exempt shall be submitted with a non-refundable fee of twenty-five (25) dollars.

(2) If the charitable organization has submitted a complete application, and meets the requirements for exemption ~~established~~ prescribed in KRS Chapter 238, the department shall issue a Notification of Exemption within thirty (30) days of the completed submission.

(3) The department shall review the application and shall notify the applicant within thirty (30) days of receipt of the initial application of the nature of any deficiencies. If identified deficiencies are not cured within thirty (30) days from the notice, the application shall be deemed withdrawn, and no exemption will be granted in response to the application.

(4) The charitable organization shall not be required to file an additional exemption application with the department if the gaming activities of the charitable organization remain within the qualifications for exempt status.

(5) The charitable organization shall notify the department of any changes in the exempt status of the charitable organization within thirty (30) days of the occurrence of such changes.

(6) A charitable organization possessing a Notice of Exemption shall file an annual report with the department before January 31 of each year. This report shall be filed on Form CG-EFR, Annual Financial Report For Exempt Organization. The report may be filed electronically.

(7) A charitable organization that has had its exemption revoked for any reason shall pay a nonrefundable reinstatement

fee of twenty-five dollars (25) with any application or request for reinstatement.

Section 7. Licensee Inspections. (1) An applicant for a license or an exemption shall be able to demonstrate the existence of their establishment by:

- (a) Contracts or leases;
- (b) Utility bills;
- (c) Records maintained by the parent organization;
- (d) Bank records; or
- (e) Similar documents.

(2) Any such records shall be accessible to the department for inspection.

(3) An applicant for a license or an exemption shall be able to demonstrate its maintenance of an office by copies of the business records including the articles of incorporation and by-laws, if any, any tax forms, the check book and bank statements, and any other records kept in the ordinary course of operating the type of business for which licensure is sought.

(4) An applicant for a charitable gaming facility license shall be able to demonstrate that it is the entity that is operating the charitable gaming facility and that the charitable gaming facility does not have any prohibited relationships with organizations, distributors, or manufacturers. This may include an inspection of its office including contracts, required reports, checkbook, bank accounts, and any other records regarding the operation of the charitable gaming facility. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(5) An applicant for a distributor's or manufacturer's license shall be able to demonstrate prior to licensing that it manufactures or distributes gaming supplies from the locations stated on the license application. This may include an inspection of those locations and a demonstration or explanation of its ability to track gaming supplies and maintain the appropriate records. Any such records stored or maintained in electronic formats shall likewise be accessible to the department for inspection.

(6) Inspections shall be completed by appropriate department personnel who shall file a report stating the ~~results~~ result(s) of the inspection performed.

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

- (a) Form CG-Exempt, "Organization Grossing Under \$25,000 Application for Exemption (2018)";
- (b) Form CG-EFR, "Annual Financial Report For Exempt Organization (2018)";
- (c) Form CG-1, "Charitable Organization License Application (2018)";
- (d) Form CG-SER, "Special Event Raffle License Application (2018)";
- (e) Form CG-2, "Distributor License Application (2018)";
- (f) Form CG-3, "Manufacturer License Application (2018)";
- (g) Form CG-4, "Facility License Application (2018)"; and
- (h) Form CG-OC, "Notice Of Change In Officers Or Chairpersons (2018)"; ~~ET~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[Form for Exemption. (1) An organization shall submit a complete, accurate, and verifiable Form CG-Exempt, Organization Grossing Under \$25,000 Application for Exemption, at least thirty (30) days prior to the expected date of gaming.~~

(2) The form shall not be considered complete until all deficiencies are resolved.

(3) If the organization does not respond to a deficiency request within thirty (30) days, the form shall be deemed withdrawn, and the organization shall not game.

(4) If the organization has submitted a complete form, and meets the requirements for licensure prescribed in KRS Chapter 238, the department shall issue a Notification of Exemption.

(5) The organization shall not be required to file an additional

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exemption request form with the department if the gaming activities of the charitable organization remain exempt.

(6) The organization shall notify the department of any changes in the information contained on the form within thirty (30) days.

(7) An organization possessing a Notice of Exemption shall file an annual report with the department before January 31 of each year. This report shall be filed on Form CG-EFR, Annual Financial Report For Exempt Organization. The report may be filed electronically.

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

(a) Form CG-Exempt, "Organization Grossing Under \$25,000 Application for Exemption", 5/15; and

(b) Form CG-EFR, "Annual Financial Report For Exempt Organization", 5/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Charitable Gaming  
(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:025. Reports[Financial Reports of a Licensed Charitable Organization].**

RELATES TO: KRS 238.530, 238.550 [(6), (7), (8)], 238.555, 238.560, 238.570 [(4)]

STATUTORY AUTHORITY: KRS 238.515 [(4), (9)], 238.530, 238.550 [(6), (7), (8)], 238.555, 238.560, 238.570 [(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) authorizes[requires] the Department of Charitable Gaming to promulgate administrative regulations establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for. KRS 238.530 authorizes the department to promulgate an administrative regulation to require a licensed distributor to report all activities relating to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment. KRS 238.560 authorizes the department to take administrative action against any person for any violation of the provisions of KRS Chapter 238 and the administrative regulations promulgated thereunder. [KRS 238.550(6), (7), and (8) require the department to promulgate administrative regulations concerning financial report forms. KRS 238.570(1) requires a licensed charitable organization to remit a percentage of the gross receipts derived from charitable gaming to the department.] This administrative regulation establishes the method and time of filing[the] financial reports and remitting payment of[the] fees due.

Section 1. Reporting. (1) Licensees shall submit corresponding forms and reports quarterly as described in Section (2) of this administrative regulation:

(a) Licensed charitable organizations shall submit Form CG-FIN, "Financial Report for a Licensed Charitable Organization";

1. Licensed charitable organizations with gross receipts of less than \$200,000 per calendar year and no weekly bingo session shall only be required to submit Form CG-FIN annually, on or before January 31 of each year;

2. Licensed charitable organizations receiving distributions from organizations described in subsection (1)(d) of this administrative regulation shall submit Form CG-FIN-RA, "Financial Report for a Licensed Charitable Organization, Recipient Account". If the licensed charitable organization receives distributions from more than one such organization, it shall submit Attachment A-1 and G-1 for each distributing organization;

(b) Licensed charitable gaming facilities shall submit Form CF-FAC, "Licensed Charitable Gaming Facility Quarterly Report";

(c) Licensed distributors shall submit Form CG-DIS "Licensed Charitable Gaming Distributor Quarterly Report" for each quarter that the distributor is licensed;

(d) Organizations licensed pursuant to KRS 238.535(14)(b) shall submit Form CG-FIN-SER, "Licensed Organization Financial Report for Special Event Raffle License Only."

(2) All financial reports shall be:

(a) Submitted on the appropriate form prescribed in Section 1(1) of this administrative regulation;

(b) Typed or in permanent ink;

(c) Complete, accurate, and legible;

(d) Contain the original signature and printed name or, if submitted electronically, the typewritten name of either the chief executive officer or the chief financial officer of the charitable organization, facility, or distributor; and

(e) Contain the original signature and printed name or, if submitted electronically, the typewritten name of the preparer of the report if prepared by an individual other than the chief executive officer or chief financial officer.

Section 2. Quarterly Reporting Requirements. (1) A licensee required to submit a quarterly report shall do so on or before the following dates for the preceding three month period:

(a) April 30;

(b) July 31;

(c) October 31; and

(d) January 31.

(2) If a date in Section 2(1) of this administrative regulation falls on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(3) The financial report and fee shall be considered timely filed if it has been:

(a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;

(b) Received in the department by hand-delivery on or before the due date; or

(c) Received by the department electronically on or before the due date.

(4) If any report or portion thereof is not filed when due, or if any required fee is not remitted when due, the licensee shall be subject to disciplinary action **pursuant to[under]** KRS 238.560.

Section 3. Specific Reporting Requirements for Licensed Charitable Organizations. (1) The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial report is due.

(2) If a charitable organization does not have any information to place on an attachment to the financial report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN, the product description shall be listed in the format "# ON # UP", with:

(a) The number "ON" being the number of bingo faces on a bingo paper sheet; and

(b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.

(4) If multiple pages are used for inventory, each person completing the inventory shall sign one (1) page of the pages that person completed and initial the remaining pages.



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(5) All expenses incurred by a licensee shall be reported on the financial report for the date on which payment was made, which shall be either the date a check was written or an electronic funds transfer was made, regardless of when the supplies were used or the services were rendered.

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

(a) Form CG-FIN, "Financial Report for a Licensed Charitable Organization (2018)";

(b) Form CG-FIN-RA, "Financial Report for a Licensed Charitable Organization, Recipient Account (2018)";

(c) Form CG-FIN-SER, "Licensed Organization Financial Report for Special Event Raffle License Only (2018)";

(d) Form CG-FAC, "Licensed Charitable Gaming Facility Quarterly Report (2018)"; and

(e) Form CG-DIS, "Licensed Charitable Gaming Distributor Quarterly Report (2018)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Reporting Period Defined. (1) For a licensed charitable organization that has gross receipts of \$200,000 or less per calendar year and does not have a weekly bingo session, a complete, accurate, legible, and verifiable financial report, in accordance with Section 2 of this administrative regulation, shall be submitted by the licensed charitable organization along with the fee required by Section 3 of this administrative regulation for every year licensed to game on or before January 31st.

(2) For a licensed charitable organization not described in subsection (1) of this section, a complete, accurate, legible, and verifiable financial report, in accordance with Section 2 of this administrative regulation, shall be submitted by the licensed charitable organization along with the fee required by Section 3 of this administrative regulation for every quarter licensed to game on or before the following dates:

(a) April 30, for the quarter January 1 to March 31;

(b) July 31, for the quarter April 1 to June 30;

(c) October 31, for the quarter July 1 to September 30; and

(d) January 31, for the quarter October 1 to December 31.

(3) If the due date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(4) The financial report and fee shall be considered filed when due if it has been:

(a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;

(b) Received in the department by hand delivery on or before the due date; or

(c) Received by the department electronically on or before the due date.

Section 2. Financial Reports. (1) A financial report shall:

(a) Be submitted on Form CG-FIN, Financial Report for a Licensed Charitable Organization, including all attachments;

(b) Be completed in ink or typed;

(c) Include the original signature and printed name or, if submitted electronically, the typewritten name of either the chief executive officer or the chief financial officer of the licensed charitable organization; and

(d) Include the original signature and printed name or, if submitted electronically, the typewritten name of the preparer if prepared by an individual other than the chief executive officer or chief financial officer.

(2) If an organization does not have any information to place on an attachment to the financial report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN, the product description shall be listed in the format "# ON # UP", with:

(a) The number "ON" being the number of bingo faces on a bingo paper sheet; and

(b) The number "UP" being the number of bingo paper sheets

contained in a bingo paper pack.

(4) If multiple pages are used for inventory, each person completing the inventory shall sign one (1) page of the pages that person completed and initial the remaining pages.

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial report is due.

Section 4. Reporting Expenses. All expenses incurred by a licensee shall be reported on the financial report for the date on which payment was made, which shall be either the date a check was written or an electronic funds transfer was made, regardless of when the supplies were used or the services were rendered.

Section 5. Incorporation by Reference. (1) Form CG-FIN, "Financial Report for a Licensed Charitable Organization", 5/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Charitable Gaming  
(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:032. Pulltabs[Pulltab construction].**

RELATES TO: KRS 238.505[(5), (27), (28)], 238.545[(1), (2)]

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)], 238.545 [(1), (2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 [(2) and (9) require] authorizes[requires] the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.545[(2)] requires the department to establish standards for pulltab construction, distribution, electronic pulltabs, and rules of play. This administrative regulation establishes those standards.

Section 1. [Pulltab] Definitions. These definitions shall apply to all administrative regulations relating to pulltabs~~and/~~ or electronic pulltabs.

(1) "Bonus round" means a single, new screen, apart from ordinary gameplay, that incrementally reveals the results of a single electronic pulltab ticket either by simulating the opening of additional tickets or simulating a prize board from which a player may pick symbols or icons.

(2) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(3) "Deal" means each separate game or series of pulltabs ~~that have~~which has the same serial number and ~~that~~which may be composed of multiple packages.

(4) "Electronic pulltab system" means:

(a) A central computer system, which may be an optional site system;

(b) Electronic pulltab devices;

(c) Point of sale stations;

(d) Secondary components; and

(e) Proprietary software that contains reporting and control functions whereby the central computer system communicates with the electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels.

(5) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab.

(6) "Fixed-base electronic pulltab device" means a single personal computing device that [which] has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device.

(7) "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the payout structure, and other information required by these regulations.

(8) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.

(9) "Game set" means the entire deal of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number.

(10) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(11) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.

(12) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes ~~that~~[which] is carried over from deal to deal, or game set to game set, until it is won.

(13) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(14) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.

(15) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000 tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(16) ["Pulltab" means a charity game ticket as defined by KRS 238.505(5).

(17) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.

(17) "Pulltab" means a charity game ticket as defined by KRS 238.505(5).

**Section 2. Conformity of Paper Pulltabs.** (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those paper pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those paper pulltabs conforming to the requirements of this administrative regulation.

Section 3[2]. Paper Pulltab Construction Standards. (1)

Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut, and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each ~~break-open~~[break open] ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in subsections (10) and (11) of this section[Sections 3(10) and 3(11) of this administrative regulation][subsection (10) or (11) of this section], the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

(a) The name of the manufacturer, or its distinctive logo;

(b) The name of the game;

(c) The manufacturer's form number;

(d) The price per individual pulltab;

(e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a), (b), (c), (d), and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six tenths (1.6) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 4[3]. Randomization of Paper Pulltabs. Winning paper

pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements.

Section 5[4]. Packaging and Distribution of Paper Pulltabs.

(1)(a) Each paper pulltab deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box, or other container; or

(b) The inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

Section 6[5]. Flares and Seal Cards for Paper Pulltabs. (1) Every deal of pulltabs shall contain a flare or a seal card. The manufacturer shall print directly on the paper flare or seal card the following information:

(a) The name of the game;

(b) The manufacturer's name or logo;

(c) The manufacturer's form number;

(d) The game serial number;

(e) The ticket count;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and

(g) The cost per play.

(2) Every deal of pulltabs shall contain instructions on how to play the game.

Section 7[6]. Cumulative Games[.] and Carryover or Progressive Games. (1) The rules for cumulative games, [and] carryover, or progressive games[.] shall apply to both paper and electronic pulltabs.

(2) The amount dedicated to a cumulative prize pool[.] or a carryover or progressive jackpot[.] shall be predetermined by the manufacturer and built into the payout structure for the game.

(a) For paper pulltabs, the dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(b) For electronic pulltab games, the dedicated amount shall be included by the manufacturer on the flare or seal card for each game.

(3) All games contributing to the cumulative prize pool[.] or the

carryover or progressive jackpot[.] shall be of the same form number.

(4) The paper or electronic flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(5) If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

(6) If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, each deal of the game shall possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer.

(7) In a carryover or progressive pulltab game, the organization shall either start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used[pursuant to 820 KAR 1:036, Section 2(15)].

(8) A progressive pulltab game shall not be designed by the manufacturer to give any player initial odds greater than a fifty (50) percent chance to win the progressive jackpot.

(9) If a paper pulltab game contributes to a progressive raffle jackpot, a licensed charitable organization shall not sell a similar version of that paper pulltab game unless it also contributes to a progressive raffle jackpot. All paper pulltab game tickets that[which] contribute to a progressive raffle jackpot shall be sold for cash and shall not be used as a merchandise prize for any bingo, pulltab, or door prizes.

Section 8[7]. Event Games. (1) The rules for event games shall apply to both paper and electronic pulltabs.

(2) An event game shall not contain a "last sale" feature.

(3) The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(4) An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(5) The prize for an event pulltab game shall not be considered a bingo prize.

Section 9[8]. Multipackaged Pulltab Deals. (1) The rules for multipackaged pulltab deals shall apply to both paper and electronic pulltabs. Every package shall be played for the deal to show the stated profit.

(2) Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 10[9]. Tracking by Manufacturer. Every manufacturer of paper pulltabs shall maintain records sufficient to track each deal of paper pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 11[40]. Tracking by Distributor. (1) Every distributor of paper and electronic pulltabs shall maintain records sufficient to track each deal of paper and electronic pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

(2) For sales in the Commonwealth of Kentucky[.] or to residents of Kentucky, the records required under this section shall be sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.[(3) For sales outside the Commonwealth of Kentucky to nonresidents of Kentucky, the records required under this section shall be sufficient if the distributor makes and retains a copy of a state charitable gaming license or a valid state identification card of the purchaser which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.]

Section 12[44]. Requirements of Distributor Invoice. (1) Distributors selling paper pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of pulltabs sold including the number of [the] deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;
- (f) The total invoice amount;
- (g) The name of the person who ordered the supplies;
- (h) The name of the person making the delivery;
- (i) The date of delivery or date the item was picked up for sale or credit;
- (j) The place or manner of delivery; and
- (k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver paper pulltabs to an agreed secure location or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

Section 13[42]. Defects. (1) If a defect in packaging or construction of a paper pulltab is discovered by an organization, the defect shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect or replace the defective items within a reasonable time, or, if the product cannot be replaced or the defect corrected, the distributor shall provide a refund to the organization.

(2) If the department, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall, with respect to paper pulltabs for use in Kentucky, require the manufacturer to:

- (a) Recall the **affected** pulltabs[**affected**] that have not been sold at retail to licensed organizations; or
- (b) Issue a total recall of all affected deals.
- (3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:
  - (a) The nature of the defect;
  - (b) Whether the defect affected game security;
  - (c) Whether the defect affected game playability;
  - (d) Whether the defect was limited to a specific number of deals of a particular form number;
  - (e) Whether the defect was easily detectable by a charitable organization;
  - (f) Whether the defect was easily detectable by members of the general public;
  - (g) Whether the defect threatens public confidence in the game; or
  - (h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(4) In consultation with the manufacturer, the department shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

Section 14. Pulltab Dispenser Construction and Use. (1) **A[An]** pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the department.

(2) Before approval by the department, a dispenser that is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements established in Section 15 of this administrative regulation.

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be

approved by the department.

Section 15. Requirements of Pulltab Dispensers. Each pulltab dispenser shall meet the following requirements:

- (1) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;
- (2) Accommodate pulltabs of different sizes;
- (3) Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resettable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;
- (4) Have an outlet or tray to catch dispensed pulltabs;
- (5) Accurately dispense the correct number of pulltabs;
- (6) Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;
- (7) Contain an illuminated electronic display to display the value of money deposited;
- (8) Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;
- (9) Not dispense any credits, or validate, read, or redeem a winning pulltab;
- (10) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;
- (11) Not have a video screen or produce audio sounds except for security alarms;
- (12) Not resemble a slot machine or other gambling device;
- (13) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;
- (14) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;
- (15) Not record test sales of pulltabs or money acceptances on the dispenser's accounting meters;
- (16) Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;
- (17) Contain an EPROM microchip, microprocessor, or other verifiable electronic program storage media which holds the dispenser's programming code and which is identical in all respects to the manufacturer's programming code[EPROM microchip] approved by the department;
- (18) Contain a RAM or an EPROM microchip equipped with a RAM microchip, which shall be installed with a tamper-proof seal inside the dispenser, or a microprocessor or flash memory microchip, or other verifiable electronic program storage media, which shall maintain the same information as required in subsection (17) of this section for six (6) months after power has been disconnected.[The microchip shall be installed with a tamper-proof seal inside the dispenser];
- (19) Automatically discontinue operation if any nonresettable accounting meter, RAM microchip,[or an] EPROM microchip, microprocessor, or other verifiable electronic program storage media is disconnected; and
- (20) Contain at least one (1) electronic money validator that[which] shall:
  - (a) Only validate United States money;
  - (b) Not validate money in denominations in excess of twenty (20) dollars;
  - (c) Transmit the value of validated money to the pulltab dispenser;
  - (d) Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;
  - (e) Be capable of preventing acceptance of known counterfeit money;
  - (f) Return any invalid money to the player;
  - (g) Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and
  - (h) Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or

currency validator is interrupted.

Section 16. Pulltab Dispensing Limitations. (1) A charitable organization shall not use a dispenser until the charitable organization that previously used the dispenser has removed its pulltabs and money from the dispenser.

(2) Each charitable organization operating the dispenser shall place upon the dispenser an identification label **that[which]** displays the organization's name and license number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session.

(4) The entire deal of pulltabs shall be sold from the dispenser and shall not be sold on the floor.

(5) All pulltabs in any one column shall have the same serial number.

(6) A licensee shall not display, use, or otherwise furnish a dispenser **that[which]** has in any manner been tampered with or **that[which]** otherwise may deceive the public or affect a person's chances of winning.

(7) A pulltab deal shall not be placed in the dispenser until the entire deal of pulltabs previously in the dispenser has been played out or permanently removed.

(8) After placement in the dispenser, a pulltab shall not be removed from the dispenser, except for those pulltabs:

(a) Actually played by consumers;

(b) Removed by department representatives or law enforcement agencies;

(c) Temporarily removed during necessary repair, and maintenance; or

(d) Removed at the end of the charitable gaming session.

(9) At least one (1) chairperson who is listed on the application for licensure shall be present at all times a pulltab dispenser is in use and shall be responsible for the administration and conduct of the pulltab dispenser.

(10) An organization utilizing a pulltab dispenser at its office location or owned premises shall only utilize the dispenser during business hours.

Section 17. Pulltab Dispenser Inspection. The department or its authorized representatives may examine and inspect any automated pulltab dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

Section 18. Pulltab Dispenser Recordkeeping. (1) Each licensed charitable organization shall maintain the following information in connection with its use of an automated pulltab dispenser:

(a) Date of purchase or lease of each dispenser;

(b) Model and serial number of each dispenser;

(c) Purchase or lease price of each dispenser;

(d) Name, address, and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and

(e) A record of all maintenance and repairs relating to the dispenser.

(2) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

(a) Date of sale or lease;

(b) Quantity sold or leased;

(c) Cost per dispenser;

(d) Model and serial number of each dispenser; and

(e) Name, address, and license number of the purchaser or lessee.

(3) All records, reports, and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

Section 19. Pulltab Dispenser Defects. (1)(a) If the department detects or discovers any defect or malfunction with the dispenser

that is not temporary in nature or affects the integrity or security of the pulltab game, the department shall direct the manufacturer, distributor, or organization to cease the sale, lease, or use of the dispenser, as applicable, and shall require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the department to the manufacturer.

(b) If the manufacturer, distributor, or organization detects or discovers any defect or malfunction with the dispenser **that[which]** is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the department of that action.

Section 20. Pulltab Rules of Play. (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the charitable gaming session, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming session at which pulltabs are sold shall not purchase or play pulltabs at that charitable gaming session. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer does not work, and from a deal the volunteer does not sell.

(6) If the charitable organization has house rules concerning its charitable gaming session, the house rules shall:

(a) Be posted in at least two (2) conspicuous locations at the charitable gaming session and announced prior to the commencement of the charitable gaming session; and

(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(c) Be followed; and

(d) Include the organization's name and license number.

Section 21. Playing. (1) The flare or seal card for paper pulltabs, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play. Electronic pulltab games shall include an electronic flare or seal card, including a progressive jackpot card relating to carryover or progressive prizes, that is available for view on the electronic pulltab device by players at all times while the game set is in play.

(2) Paper pulltabs shall not be sold to the public from the original packing box or container. Paper pulltabs shall be removed from the original box or container and mixed by shuffling together prior to sale.

(3) If a deal of paper pulltabs is packed in more than one (1) box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Paper pulltabs **that[which]** have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner **that[which]** tends to deceive the public or affect the chances of winning or losing, shall not be placed into play. The organization shall notify the Department of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the paper pulltabs within each deal matches the serial number on the flare or seal card accompanying the deal by conducting a random sampling of



pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal or game set do not match the serial number on the flare or seal card accompanying the deal or game set, the organization shall not place the deal or game set into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the department in writing.

(6) Any licensed charitable organization ~~that~~**[which]** sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial report.

(7)(a) If a deal or game set is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal or game set closed or completed, declare the winners, and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained **pursuant to subsection (15) of this section**~~as required in Section 21(15) of this administrative regulation~~.

(c) If no winning pulltabs remain in the paper deal, the licensed charitable organization may consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs **pursuant to subsection (15) of this section**~~as required in Section 21(15) of this administrative regulation~~.

(d) A licensed charitable organization shall not complete play of a deal, game set, or a seal card it did not initiate.

(8) A pulltab shall not be sold to the public at a price different than that **generated**~~[printed]~~ by the manufacturer of the pulltab upon the flare or seal card ~~that~~**[which]** accompanies the deal or game set.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) In playing paper pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal or game set of tickets as designed by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the paper flare or seal card the prize structure to be awarded before placing the deal or game set into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid no later than five (5) days from the date of redemption.

(14) All winning paper pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, in paper or electronic form, for a period of twelve (12) months, to allow auditing by the staff of the department:

1. All winning pulltabs with a prize value of fifty (50) dollars and above;
2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;
3. All seal cards with a prize value of fifty (50) dollars and above;
4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) These records may be maintained at the gaming location.

(16) The fair market value of bingo paper, a card-minding device, pulltab, or electronic pulltab device given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, pulltab, or electronic pulltab device at that charitable gaming session.

(17)(a) If bingo paper is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of bingo paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its charitable gaming session records.

(18)(a) If a card-minding device or electronic pulltab device is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per charitable gaming session.

(d) The organization shall retain the voucher with its charitable gaming session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device and electronic pulltab device.

(19) If a paper pulltab or electronic pulltab device is awarded as a promotional item or a door prize, the amount and description of the pulltab or electronic pulltab device and credits loaded on each device, if any, shall be listed on the charitable gaming session program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(20) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales, and it shall be recorded as a sale on the charitable gaming session records.

(21) Vouchers shall be redeemed on the same day as awarded.

(22) Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

(23) "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 22. Seal Card Games. (1) The organization shall post the paper seal card for the deal in play at the location of the seal game while the deal is in play. An electronic seal for an electronic game set shall be viewable, upon player request, on the video screen of the electronic pulltab device while the game set is in play.

(2) If a deal or game set with a seal card is not completed during a charitable gaming session, the organization shall require the patrons with holders to sign or enter their name electronically on the seal card and provide a means of contacting them when the

winner is declared.

(3)(a) The seal for the deal or game set shall be broken, torn open, or otherwise revealed in plain view of all persons present when:

1. All tickets from a deal or game set have been sold;  
2. All the winning tickets from a deal or game set have been sold;

3. All the lines on the sign-up card have been filled;  
4. The deal or game set has been closed because no future date is anticipated; or

5. Instructed to by the game as designed by the manufacturer.

(b) Each winning combination, the name of the game, and the serial number of the deal or game set shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

**Section 23. Seal Card Games with Carry Over or Progressive Prizes.** (1) The prize pool for a progressive pulltab game shall be established only through the play of deals or game sets of the same game that[which] bear a manufacturer's form number identical to the form number of any previously-played deals or game sets contributing to the prize pool.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets shall not be required to match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is awarded. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day its office is open. If an organization stops conducting charitable gaming or wishes to stop playing a progressive pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another progressive game or determine a method to award the progressive jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) The seal card for each deal or game set in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal or game set that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The serial numbers for each deal or game set contributing to a carryover or progressive jackpot prize shall be recorded in the charitable gaming session records.

(7) A progressive or carryover pulltab game shall be played in accord with the manufacturer's specifications for the determination of a winner, unless the department permits otherwise pursuant to subsection (3) of this section.

(8) If a progressive or carryover pulltab game bearing the same manufacturer's form number is no longer available, the organization shall contact the department for instructions on how to proceed.

(9)(a) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal or game set of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize. For progressive pulltab games played on an electronic pulltab device, a poster shall be displayed to fulfill this requirement.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(10) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match the serial number and form number on a seal card from a deal or game set of tickets that[which] contributed to the jackpot prize.

(11) For jackpot prizes of \$250 or over, the organization shall attach a copy of the valid state identification card that[which] contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(12) The jackpot prize in a progressive game may accrue in excess of \$2,400. An individual jackpot prize shall not be paid in excess of \$2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next charitable gaming session at each charitable gaming session shall be recorded in the charitable gaming session record.

(13) Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool if[as long as] it also includes the statement that the individual payout shall not exceed \$2,400.

(14) A licensed charitable organization shall report to the department concerning its play of seal card games with a progressive prize on the financial report.

(15) The jackpot prize pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the charitable gaming session.

**Section 24. Seal Card Games with Cumulative Prizes.** (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals or game sets of the same game that[which] bear a manufacturer's form number identical to the form number of any previously played deals or game sets contributing to the prize pool, unless the department permits otherwise pursuant to subsection (3) of this section.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal matches[match] the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until the cumulative prize pool has been awarded. If that game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day their office is open. If an organization stops conducting charitable gaming or wishes to stop playing a cumulative pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another cumulative game or determine a method to award the cumulative jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game, unless the department permits otherwise pursuant to **subsection (3) if this section[Section 24(3) of this administrative regulation]**.

(5) The seal card for each deal or game set in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the

cumulative prize pool.

(6) Every seal card for each deal or game set that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal or game set contributing to a cumulative prize pool shall be recorded in the charitable gaming session records.

(8) An organization shall not award the cumulative prize pool unless the serial number and form number on the winning ticket matches the serial number and form number on a seal card from a deal or game set of tickets ~~that~~which contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of \$2,400.

(10) A licensed charitable organization shall report to the department concerning its play of seal card games of cumulative games on the financial report.

#### Section 25. Electronic Pulltab System Construction Standards.

(1) An electronic pulltab system's central computer system shall be dedicated to electronic accounting, reporting, ~~and the~~ presentation, randomization, and transmission of electronic pulltabs to electronic pulltab devices. It shall also be capable of generating the data necessary to provide reports required by regulation or otherwise specified by the department.

(2) A player shall purchase or otherwise obtain access to an electronic pulltab device, and load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, only from a point of sale station. The point of sale station may be stationary, mobile, or self-service.

(3) All equipment used to facilitate the distribution, play, or redemption of electronic pulltabs shall be physically located within the boundaries of the Commonwealth of Kentucky. Electronic pulltab devices, site system if used, point of sale stations, and all secondary components shall be located on the premises where the charitable gaming session is being held.

(4) A manufacturer, distributor, or charitable organization shall not add to an electronic pulltab system any software or program unless the software or program has been certified by an independent testing facility. If the department detects or discovers an electronic pulltab system at a playing location that is using a program or software that has not been certified by an independent testing facility, the electronic pulltab system shall be determined to have an unauthorized modification and use of the system shall cease immediately.

(5) Any element of the central computer system that holds or maintains game data, other than an electronic pulltab device or point of sale station, shall be kept in a locked and secure enclosure with limited access to designated personnel. The system shall provide a secure physical and electronic means for securing the games and game data against alteration, tampering, or unauthorized access.

(6) The central computer system shall include a central server located in the Commonwealth of Kentucky that is accessible to the department so the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the electronic pulltab system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(a) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the electronic pulltab system prior to the operation of the system within Kentucky, and at all times while the system remains operational within Kentucky.

(b) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least three (3) days prior to the change.

(c) Any reports maintained or generated by the electronic pulltab system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(7) A site system, if used, shall:

(a) Be located at the gaming premises;

(b) Be operated by the charitable organization;

(c) Interface with, connect with, control, or define the operational parameters of the electronic pulltab devices;

(d) Report and transmit the game results as prescribed by the department;

(e) Provide security and access levels sufficient so that the internal control objectives are met as prescribed by the department; and

(f) Contain a point of sale station.

(8) The site system, if used, may include the following components:

(a) Required printers;

(b) Proprietary executable software;

(c) Report generation software; and

(d) An accounting system or database.

(9) The electronic pulltab system shall provide password protection for each organization.

(10) An electronic pulltab system shall provide a means for terminating a game set if information about electronic pulltabs in an open game set has been accessed, or if the department determines there has been a breach of game security. Traceability of unauthorized access including time and date, users involved, and any other relevant information shall be available.

(11) An electronic pulltab system shall not permit the alteration of any accounting or significant event information. Significant events shall include power resets or failures, communication loss between an electronic pulltab device and the electronic pulltab system, any award in excess of the ~~single-win~~single-win limit for an electronic pulltab, or corruption of the electronic pulltab system memory or storage. If financial data is changed, an automated audit log shall be capable of being produced to document the following:

(a) Data element altered;

(b) Data element value prior to alteration;

(c) Data element value after alteration; and

(d) Time and date of alteration.

(12) An electronic pulltab system shall provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components, including the following:

(a) All programs and data files shall only be accessible via the entry of a password that shall be known only to authorized personnel;

(b) The electronic pulltab system shall have multiple security access levels to control and restrict different privilege levels;

(c) The electronic pulltab system access accounts shall be unique when assigned to the authorized personnel;

(d) The storage of passwords and PINs shall be in an encrypted, nonreversible form; and

(e) A program or report shall be available that lists all authorized users on the electronic pulltab system including their privilege level.

(13) All components of an electronic pulltab system that allow access to users, other than end-users for game play, shall have a password sign-on comprised of a personal identification code and a personal password.

(14) Electronic pulltab system software components shall be verifiable by a secure means at the system level. An electronic pulltab system shall have the ability to allow for an independent integrity check of the components from an outside source and is required for all control programs that may affect the integrity of the electronic pulltab system. This shall be accomplished by being authenticated by a third-party device, which may be embedded within the electronic pulltab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check shall provide a means for field verification of the electronic pulltab system components.

(15) The electronic pulltab system shall have a medium for securely storing electronic pulltab game sets ~~that~~which shall be mirrored in real time by a backup medium. The electronic pulltab system shall also provide a means for storing duplicates of the game sets already transmitted to the electronic pulltab devices so

as to reflect, on an ongoing basis, changes in the transmitted game sets as they occur.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so that if the primary storage medium fails, the functions of the electronic pulltab system and the process of auditing those functions shall continue with no critical data loss.

(b) The database shall be stored on redundant media so that a single failure of any portion of the system shall not result in the loss or corruption of data.

(c) If there is a catastrophic failure when the electronic pulltab system cannot be restarted in any other way, it shall be possible to reload the electronic pulltab system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;
2. All accounting information; and
3. Auditing information, including all open game sets and the summary of completed game sets.

(16) Connections between all components of the electronic pulltab system shall only be through use of secure communication protocols ~~that~~**[which]** are designed to prevent unauthorized access or tampering, employing Data Encryption Standards (DES) or equivalent encryption with changeable seeds or algorithms.

(17) An electronic pulltab system's central computer system may be used to record the data used to verify game play and to configure and perform security checks on electronic pulltab devices, if the functions do not affect the security, integrity, or outcome of any game and meet the requirements ~~established/set forth~~ in this administrative regulation regarding program storage devices.

(18) An electronic pulltab system shall not display to the player, the licensed charitable organization, or the licensed distributor the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play. Once a game set has been closed, it shall not be able to be opened for play.

(19) The electronic pulltab system shall render unplayable the electronic pulltabs of a charitable organization once the organization logs out of the system at the end of the organization's charitable gaming session and until the organization logs back onto the system at the start of the organization's next scheduled charitable gaming session. If multiple organizations use the same electronic pulltab devices and electronic pulltab system, one (1) organization's electronic pulltab games and data shall not be accessible or played by another organization.

(20) An electronic pulltab system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(21) One (1) or more electronic internal accounting systems shall be required to perform recordkeeping, reporting, and other functions in support of an electronic pulltab system. The electronic internal accounting system shall not interfere with the outcome of any gaming function.

(22) The electronic internal accounting system shall be capable of recording and retaining for a period of not less than three (3) years the following information:

(a) The name and license number of the organization utilizing an electronic pulltab system; and

(b) For each charitable gaming session:

1. The date and time of each log-on and log-off of an organization;
2. The total amount of all monetary transactions regarding electronic pulltabs and electronic pulltab devices at each charitable gaming session;
3. The total number of electronic pulltab devices sold or provided at each charitable gaming session;
4. The serial number of each hand-held electronic pulltab device sold or provided;

5. The terminal number for each fixed base electronic pulltab device sold or provided;

6. The name, serial number, price, and predetermined finite number of tickets within each game set available for play at each charitable gaming session;

7. The total number of electronic pulltabs played from each game set at each charitable gaming session;

8. All prize payouts for each game set per charitable gaming session; and

9. All wagers and other information necessary to fully reconstruct a game outcome.

(23) The information required ~~pursuant to subsection (22) of this section~~**[by Section 25(22) of this administrative regulation]** shall be secure and shall not be accessible for alteration. Information pertaining to the number of electronic pulltabs that remain in an open game set, or the number of winners or losers that have been drawn or still remain in an open game set shall not be accessible to the licensed organization or the licensed distributor.

(24) The electronic pulltab system's central computer system shall maintain a printable, permanent record of all transactions involving each device and each closed electronic pulltab game played on each device.

(25) An electronic pulltab system shall have report generation software with the capability to print all information required to be maintained on the system's active or archived databases, and pursuant to the restrictions related to information available on open game sets.

(26) All data required to be available or reported by this administrative regulation shall be retained for a period of not less than three (3) years.

(27) An electronic pulltab system shall utilize randomizing procedures in the creation of game sets for electronic pulltabs or utilize externally generated randomized game sets. After randomization, game sets may be broken into game subsets of equal size ~~that~~**[which]** shall be assigned a unique serial number.

(28) Winning electronic pulltabs shall be distributed randomly among all other pulltabs in a game set to eliminate any pattern between game sets, or portions of game sets.

(29) Any random number generation, shuffling, or randomization of outcomes used in connection with an electronic pulltab system shall be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability.

**Section 26. Electronic Pulltab Point of Sale Requirements.** (1) An electronic pulltab system shall include a point of sale station that is used to facilitate the sale of an electronic pulltab device, to load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, and to cash-out or redeem credits from the play of electronic pulltabs.

(a) The point of sale station may be stationary, mobile, or self-service.

(b) The point of sale station shall not be designed or manufactured to resemble an electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(c) The point of sale station shall not have vertical or horizontal spinning reels, a pull handle, sounds or music ~~intended to entice a player to play~~, flashing lights, tower light, top box, enhanced animation, artwork, or any other attribute or representation that mimics a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(d) The point of sale station shall not function simultaneously as an electronic pulltab device.

(2) The point of sale station shall be capable of printing a receipt, which the organization shall provide to the player, that details each transaction. The receipt shall contain, at a minimum, the following information:

- (a) The date and time of the transaction;
- (b) A unique non-resettable transaction number that is printed in continuous, consecutive order;
- (c) The dollar amount of the transaction, including the cost, if

any, of the electronic pulltab device and the amount of money loaded to a player account that will be available for the purchase of electronic pulltabs during that charitable gaming session;

(d) A unique entry code or account number that will be used to activate an electronic pulltab device and make available to the player the money loaded to the player account at the point of sale for the purchase of electronic pulltabs during that charitable gaming session;

(e) The name of the charitable organization and license number; and

(f) The point of sale identification number or name.

(3) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required pursuant to subsection (2) of this section~~[by Section 26(2) of this administrative regulation]~~.

(4) The point of sale station shall be capable of displaying, at minimum, the following for each charitable gaming session:

(a) The sales transaction history, including:

1. The organization name and license number;
2. Date and time of each transaction;
3. Dollar value of each transaction;
4. Quantity of electronic pulltab devices sold;
5. All transaction numbers; and
6. The point of sale identification number or name; and

(b) A pay-out history detailing all pay-outs, including:

1. The organization name and license number;
2. Date and time of each pay-out;
3. Dollar value of each pay-out; and
4. Point of sale identification number or name.

(5) A point of sale station shall not display information relating to prizes already paid out in a particular game set, the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play.

(6) A player shall only cash-out or redeem credits from a point of sale station.

#### Section 27. Electronic Pulltab Device Construction Standards.

(1) An electronic pulltab device shall not be capable of being used for the purpose of engaging in any game prohibited by the department.

(2) An electronic pulltab device shall be designed as a handheld or fixed base personal computing device that:

(a) Is used to play one (1) or more electronic pulltab games;

(b) Requires coded entry to activate a device for a player to purchase and play electronic pulltabs, but does not allow the use of coin, currency, or tokens to be inserted to purchase and play electronic pulltabs;

(c) Maintains and displays information pertaining to accumulation of credits that may be applied to games in play or redeemed upon termination of play;

(d) Has no vertical or horizontal spinning reels, pull handle, sounds or music other than those allowed by Section 28(5)(b) of this administrative regulation~~[solely intended to entice a player to play]~~, flashing lights, tower light, top box, coin tray, ticket acceptor, hopper, coin acceptor, cabinet, artwork, or any other attribute or representation that mimics a video slot machine;

(e) Shall not be capable of displaying any animation while in an idle state. An electronic pulltab device may use simple display elements or screen savers to prevent monitor damage;

(f) Has no additional function as a gambling device other than as an electronic pulltab device or as an approved card-minding device;

(g) Is not a pulltab dispenser as established in this administrative regulation~~[described in these regulations]~~; and

(h) The device shall~~[must]~~ have adjustable volume accessible to the player or the charitable organization.

(3) An electronic pulltab device shall not have hardware or software that determines the outcome of any electronic pulltab, produces its own outcome, or affects the order of electronic pulltabs as dispensed from the electronic pulltab system's central computer system. The game outcome shall be determined by the electronic pulltab system's central computer system.

(4) An electronic pulltab device may utilize a touch screen. The touch screen shall meet the following requirements:

(a) It shall be accurate once calibrated;

(b) It shall be able to be recalibrated; and

(c) It shall have no hidden or undocumented buttons or touchpoints anywhere on the touch screen.

(5) A fixed base electronic pulltab device shall not be built into a cabinet or in any way be designed or manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

Section 28. Electronic Pulltab Software Construction Standards. (1) Any game available for play in the Commonwealth of Kentucky shall~~[must]~~ be installed on the demonstration terminals at the Department of Charitable Gaming's office in Frankfort, Kentucky~~[prior to being available for play in the Commonwealth]~~.

(2) An electronic pulltab system shall dispense, upon player request and payment of consideration, an electronic pulltab. A player shall win if the player's electronic pulltab contains a combination of symbols or numbers that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game. All games shall be played without replacement.

(3) An electronic pulltab game or game set shall:

(a) Be a version of a paper pulltab game, with a prize structure and gameplay rules substantially similar to a paper pulltab game, that is played on an electronic pulltab device;

(b) Have a predetermined, finite number of winning and losing tickets, not to exceed 25,000 tickets per game set;

(c) Charge the same price for each ticket in a game set;

(d) Comply with KRS Chapter 238, and 820 KAR Chapter 1;

(e) Comply with prize limits established~~[set forth]~~ in KRS Chapter 238;

(f) Have a unique serial number for each game set that shall not be regenerated. Each pulltab in a game set shall bear the same serial number and only one (1) serial number shall be used in a game set. After randomization, game sets may be broken into subsets of equal size. If game subsets are used, they shall each be assigned a unique serial number and be traceable to a parent game set. If a seal card is used with a pulltab game set, the seal card shall bear the same serial number as each pulltab~~[and]~~

(g) Have an electronic flare or seal card, viewable upon player request, that displays the name of the game, manufacturer's name or logo, manufacturer's form number, the game serial number, the predetermined finite number of tickets in the game set, and the prize structure, including a description of the number of winning pulltabs by denomination, and amounts, if any, dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize~~[, if]~~ and the cost per play of an electronic pulltab within the game set; and~~[.]~~

(h) Every game set of electronic pulltabs shall contain electronic rules of play.

(4) An electronic pulltab game shall not contain vertical or horizontal spinning reels or other representations that mimic a video slot machine.

(5) Games shall not contain obscene or offensive graphics, sounds, or references.

(a) Game animation shall be limited to:

1. Animated characters~~[A single animated character]~~ related to the theme of the game~~[that does not traverse the screen]~~;

2. An animation, not to exceed five (5)~~[two (2)]~~ seconds in duration, to simulate the opening of the ticket, a window on the ticket, or a window in a player-pick bonus round that simulates a prize board; and

3. An animated graphic, not to exceed five (5)~~[two (2)]~~ seconds in duration, indicating whether and how much money the player's ticket or a simulated free ticket in a bonus round has won or lost~~[animation that simulates the opening of a paper pulltab]~~.



(b) Game sounds shall have a duration of no longer than ~~five (5)~~~~two (2)~~ seconds~~one second~~ and shall be limited to:

1. Indicating that the player's ticket has won;
2. Indicating that the player's ticket has lost;
3. Indicating that the player has pressed a button; and
4. Simulating the opening of a paper pulltab ticket.

~~(c) Any electronic pulltab game approved by the department prior to October 1, 2018, may remain available for play.~~

(6) The result of an electronic pulltab ticket shall be clearly shown on the video display~~[without utilizing animation]~~. Winning tickets shall indicate to the player the symbols or combination of symbols that resulted in a winning ticket. Prizes shall be added as a credit to the player's account.

~~(7) The game may, without utilizing animation, include text-based graphics to indicate that the ticket has won and that the player has won an opportunity to play in a bonus round.~~

~~(8)~~ The available games, flare, and rules of play shall be displayed on the electronic pulltab device's video screen upon player request.

~~(8)(9)~~ Any number of ~~games~~~~game~~ may be selectable for play on any given electronic pulltab device. Only one (1) of the ~~games~~~~game~~ shall be playable at a time.

~~(9)(10)~~ An electronic pulltab device shall have one (1) or more buttons, or an electromechanical or touch screen to facilitate the following functions:

- (a) Viewing of the game "help" screens;
- (b) Viewing of the game rules including the flare or seal card;
- (c) Initiating game play;
- (d) Cash-out or logout; and
- (e) Purchasing or revealing the pulltab.

~~(10)(11)~~ Each electronic pulltab shall be initially displayed so that the numbers, letters, or symbols on the pulltab are concealed. Each electronic pulltab game shall require the player to press a "purchase" or equivalent button to initiate the purchase of an electronic pulltab. The game shall then require the player to press a subsequent button or buttons to reveal the numbers, letters, or symbols on the pulltab. A player shall have the option of opening each individual line, row, or column of each electronic pulltab or choosing to "open all".

~~(11)(12)~~ If the player's winning ticket leads to a bonus round that simulates the opening of additional tickets, then the following disclaimer ~~shall~~~~must~~ be displayed in a conspicuous manner in the player interface of the electronic pulltab device every time the player wins a supplemental tab, and on the HELP screen: "Tabs that appear in [Name of Game] do not represent equal or separate chances to win. The supplemental tabs are utilized to reveal the value of the initial, winning pulltab ticket incrementally. These supplemental tabs appear for entertainment value only."

~~(12)(13)~~ An available player account balance shall be collected by the player by pressing the "cash-out" button or "logoff" button on the electronic pulltab device and taking the device, the receipt, or, if allowed, a player account card to the point of sale station.

Section 29. Independent Testing Facility Certification for Electronic Pulltabs. (1) An electronic pulltab system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of charitable gaming until an identical system containing identical software has been tested and certified by an independent testing facility.

(2) The cost of testing and certification shall be the responsibility of the manufacturer.

(3) The independent testing facility shall certify in writing that the electronic pulltab system and associated hardware and software conform, at a minimum, to the requirements and restrictions ~~established~~~~set forth~~ in KRS Chapter 238 and these administrative regulations.

(4)(a) The department, in consultation with the independent testing facility, shall determine if the electronic pulltab system and associated hardware and software conform to the requirements and restrictions ~~established~~~~contained~~ in KRS Chapter 238 and

these administrative regulations, and shall notify the manufacturer of its decision in writing.

(b) Once the department has received the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days.

(5) Any modifications to an electronic pulltab system or its software, except as provided in Section 31(7) of this administrative regulation, shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer upon request, in the same manner as a new system or new software. Testing and certification shall be at the manufacturer's expense.

#### Section 30. Electronic Pulltab Defect and Recall.

(1)(a) If a manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the manufacturer, distributor, or charitable organization shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(b) If the department detects, discovers, or is notified of any problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected electronic pulltab system, electronic pulltab device, or electronic pulltab game until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(c) If the department, in consultation with the manufacturer or distributor, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected electronic pulltab systems, electronic pulltab devices, or electronic pulltab games or affected game sets or subsets, if necessary.

(d) In choosing and directing a particular recall ~~pursuant to paragraph (c) of this subsection~~~~in accordance with Section 30(1)(c) of this administrative regulation~~, the department shall be guided in each circumstance by any combination of the following factors:

1. The nature of the defect;
2. Whether the defect affected game security;
3. Whether the defect affected game playability;
4. Whether the defect was limited to a specific number of deals of a particular form number;
5. Whether the defect was easily detectable by a charitable organization;
6. Whether the defect was easily detectable by members of the general public;
7. Whether the defect threatens public confidence in the game;

or

8. Whether the defect is capable of being used to adversely affect the fair play of the game.

(e) The manufacturer or distributor may correct the defect, if possible, without issuing a total recall if the affected electronic pulltab devices and electronic pulltabs are not offered for sale, lease, or use~~[if and]~~ until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected electronic pulltab system, devices, or pulltab game may be reoffered for sale, lease, or use.

(f) If a recall of an electronic pulltab system or electronic pulltab device is necessary, the department, in consultation with the

manufacturer, shall determine a specific date for the recall of any affected electronic pulltab system or electronic pulltab device to be completed and whether the manufacturer is required to reimburse the organization or distributor. The recall of any electronic pulltab game shall occur no later than twenty-four (24) hours after the manufacturer is notified of the defect.

Section 31. Electronic Pulltab Manufacturer Requirements. (1)

A manufacturer shall affix to each electronic pulltab device an identification badge that shall include the following information:

- (a) Manufacturer name;
- (b) A unique serial number;
- (c) The electronic pulltab device model number, if applicable;
- and
- (d) The date of manufacture, if applicable.

(2) Each manufacturer selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, and electronic pulltabs shall maintain a log or other record showing the following:

- (a) The name, address, and license number of the distributor to whom the electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs were sold, leased, or otherwise furnished;
- (b) The date of the transaction with the distributor;
- (c) The model, version, and serial number of each hand-held electronic pulltab device, if applicable;
- (d) The account number or terminal number of each fixed base electronic pulltab device, if applicable;
- (e) The quantity of each type of electronic pulltab device;
- (f) The model and version number of the system software;
- (g) The name, form number, and serial number of each game set of electronic pulltabs; and
- (h) The quantity of game sets sold, the cost per game set, the selling price per ticket, the cash take-in per game set, and the cash payout per game set.

(3) A manufacturer selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a distributor shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The address to which the shipment was delivered;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;
- (g) The total invoice amount;
- (h) The name of the person who ordered the supplies;
- (i) The name of the person making the delivery;
- (j) The date of delivery or date the item was picked up for sale or credit;
- (k) The place or manner of delivery; and
- (l) The name and signature of the person taking delivery, if any.

(4) A manufacturer providing electronic pulltabs to a distributor for distribution to a licensed charitable organization shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
  - (b) The distributor name, address, and license number;
  - (c) The organization name, address, and license number;
  - (d) The date of sale or credit and the time period covered by the invoice;
  - (e) The conditions of the sale or credit;
  - (f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and
  - (g) The total invoice amount.
- (5) The manufacturer shall maintain physical or electronic

copies of the documentation required by this section for a period of not less than three (3) years.

(6) A manufacturer shall supply any available financial reports to distributors and organizations, upon request, that provide detailed pulltab sales activity for the requesting distributor or organization for a selected date range.

(7) A manufacturer may conduct routine maintenance activities and replace secondary components of an electronic pulltab system without additional testing and certification ~~iffas long as~~ this activity does not affect the operation of any proprietary software, the manner in which an electronic pulltab game is played, the integrity of any critical or controlled software, or the outcome of an electronic pulltab game. A record of all activities shall be maintained and provided to the department within ten (10) days of the maintenance or replacement.

(8) A licensed manufacturer of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 32. Electronic Pulltab Distributor Requirements. (1)

Before initial use by a charitable organization, the distributor shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) A distributor shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component ~~that~~[which] has in any manner been marked, defaced, or tampered with, or ~~that~~[which] is otherwise intended to deceive the public or affect a person's chances of winning.

(3) Before the complete removal of any electronic pulltab system, the distributor shall supply a copy of the data files to each charitable organization ~~that~~[which] used the electronic pulltab system and to the department.

(4) Each distributor selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs shall maintain a log or other record showing the following information, if applicable:

- (a) The name of the location, physical address, telephone number, and facility license number, if applicable, where the electronic pulltab devices, site systems, point of sale stations, and secondary components are located for play;
- (b) A description, including the quantity, of all electronic pulltab devices, site systems, point of sale stations, and secondary components at each playing location;
- (c) The date any electronic pulltab device, site system, point of sale station, or secondary component was installed in or removed from a playing location;
- (d) The model, version, and serial numbers or terminal numbers of the electronic pulltab devices, site systems, point of sale stations, and secondary components, if applicable;
- (e) The name and license number of the charitable organization or distributor to whom the electronic pulltab devices, site systems, point of sale stations, or secondary components were sold, leased, or otherwise furnished;
- (f) The name and license number of the manufacturer or distributor from whom the electronic pulltab devices, site systems, point of sale stations, and secondary components were purchased, leased, or otherwise obtained;
- (g) Each contract, lease, or purchase agreement between a distributor and the charitable organization or other distributor to which the electronic pulltab devices, site systems, point of sale stations, or secondary components are furnished; and
- (h) The total dollar amount of electronic pulltab device, site system, point of sale station, and secondary component sales or lease transactions regarding each charitable organization to which the equipment was furnished during each calendar quarter.

(5) A distributor selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or

secondary components to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The organization name, address, and license number;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;
- (g) The total invoice amount;
- (h) The name of the person who ordered the supplies;
- (i) The name of the person making the delivery;
- (j) The date of delivery or date the item was picked up for sale or credit;

- (k) The place or manner of delivery; and
- (l) The name and signature of the person taking delivery, if any.

(6) A distributor providing electronic pulltabs to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The organization name, address, and license number;
- (d) The date of sale or credit and the time period covered by the invoice;

- (e) The conditions of the sale or credit;
- (f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

- (g) The total invoice amount.

(7) An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

(8) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(9) A distributor shall deliver electronic pulltab devices, site systems, point of sale stations, and secondary components to an agreed secure location or to an identified person.

(10) A licensed distributor of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

**Section 33. Charitable Organization Requirements.** (1) Before initial use, the organization shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) An organization shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component that[which] has in any manner been marked, defaced, or tampered with, or that[which] is otherwise intended to deceive the public or affect a person's chances of winning.

(3) The use of electronic pulltab devices shall be limited to the following:

- (a) A maximum of **35[20]** electronic pulltab devices on or in the primary office location of a licensed charitable organization;
- (b) A maximum of **50[32]** electronic pulltab devices during the bingo session of a licensed charitable organization;
- (c) A maximum of **50[32]** electronic pulltab devices in a licensed charitable gaming facility; or
- (d) With prior approval of the department, at any authorized

charity fundraising event conducted by a licensed charitable organization at an off-site location.

(4) All electronic pulltab games shall be sold and played at the authorized locations and shall not be linked to other authorized locations.

(5) Electronic pulltab games shall not be transferred electronically or otherwise to any other location by the licensed organization.

(6) An organization may remove from play a device that a player has not maintained in an activated mode for a specified period of time determined by the organization. The organization shall provide the notice in its house rules and shall allow the player to cash-out.

(7) Before purchasing or being provided with an electronic pulltab device, a player shall present proof that the player is at least eighteen (18) years of age. Proof shall be in the form of a picture identification card that includes the player's date of birth. If an organization uses a self-service point of sale kiosk, identification shall be presented and verified at the door.

(8) Each player shall be limited to the use of one (1) electronic pulltab device at a time.

(9) If a player's electronic pulltab device malfunctions during a game, it shall be repaired or the credits shall be transferred to another electronic pulltab device.

(10) The department shall be allowed access to examine and inspect any part of an electronic pulltab system. The department shall be granted access to all electronic pulltab devices in use by a charitable organization.

(11) The organization shall reasonably ensure that the connection to the electronic pulltab system's central computer system is operational at all times.

(12) If the organization sells electronic pulltab devices for a discounted price or gives them away as a promotion, the site system shall be programmed to account for the discounted item and priced separately from those sold at the regular price. A generic discount key shall not be allowed.

(13) The organization shall **generate[print]** an Electronic Pulltab Receipts and Payouts report at the end of each charitable gaming session and maintain it with the charitable gaming session records. The Electronic Pulltab Receipts and Payouts worksheet shall be completed in the format of Form CG-EPRP.

(14) A manufacturer's representative or distributor's representative may be present during a charitable gaming session only to consult, demonstrate, **provide technical support, or[and]** train the organization on the operation of the electronic pulltab system.

**Section 34. Incorporation by Reference.** (1) Form CG-EPRP, "Electronic Pulltab Receipts and Payouts (2018)", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Charitable Gaming**  
**(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:042. Bingo[Bingo paper standards].**

RELATES TO: KRS 238.515[(2), (9)], 238.530, 238.545

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)], 238.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(9)] authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and [office] to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. [KRS-238.515 (2) authorizes the office to establish charitable gaming standards.] This administrative regulation establishes standards for the construction and distribution of bingo paper, [;] the construction and distribution of bingo equipment including card-minding devices, [;] and the conduct of bingo play.

Section 1. [Bingo] Definitions. (1) "Bingo ball" means a ball imprinted with numbers and letters that[which] is used in the selection process of a bingo game.

(2) "Bingo machine" means:

(a) A type of selection device with:

1. A receptacle for unselected bingo balls; [;]

2. A blower for selecting; [;] and

3. A ball tray that contains seventy-five (75) holes in which to place the ball once it is called; or

(b) A generator that randomly selects the balls and displays them on the face of the device.

(3) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit.

(4) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by a charitable organization for sale at a charitable gaming session that becomes a unique item for sale with a specific price.

(5) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.

(6) "Break open bingo" means a bingo game in which the numbers on the face are hidden until after purchase.

(7) "Bundle" means to price a certain amount of bingo paper faces for a certain price with the patron choosing the type of packs that make up the total faces.

(8) "Called" means that a number located on a bingo ball has been:

(a) Selected by the selection device;

(b) Verbally announced by the caller;

(c) Displayed on the flashboard or other device; and

(d) Placed in a ball tray or otherwise continuously displayed until completion of the bingo game.

(9) "Continuation game" means a multipart bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.

(10) "Covered" means daubed or smeared with indelible ink if using a disposable paper bingo face, or marked electronically if using a card-minding device.

(11) "Disposable paper bingo face" means a non-reusable bingo face assembled in a single sheet, multiple face sheet, pad, or pack form.

(12) "Face" means a paper or an electronic representation containing:

(a) Five (5) rows of five (5) squares with numbers or symbols;

(b) A free center space;

(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns; and

(d) A unique perm number identifying each face.

(13) "Fixed-base card-minding device" means a computer system, not necessarily manufactured by a licensed manufacturer, that[which] has been loaded with proprietary software by a licensed manufacturer to enable it to function as a card-minding device.

(14) "Flashboard" or "display board" means a board that

displays the bingo numbers called.

(15) "Hand-held card-minding device" means a hand-held computer that is either manufactured or customized by the manufacturer to operate as a card-minding device.

(16) "Hard card" means a reusable card bearing a bingo face or faces.

(17) "Perm number" means the number located on a bingo face that identifies the unique pattern of numbers appearing on that face.

(18) "Pickle jar, bonanza ball, or hot ball" means games played in conjunction with other bingo games in which:

(a) A bingo ball is selected by the selection device prior to the start of certain bingo games or all bingo games; and

(b) A patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball, if the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played.

(19) "Player pick bingo" means that the patron picks the numbers that[which] constitute a bingo on his[or her] face or faces and a machine prints those numbers on the bingo face at the charitable gaming session before the game is played.

(20) "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo session if no player wins at that session.

(21) "Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(22) "Selection device" means a device that:

(a) May be operated manually or automatically; and

(b) Is used to randomly select bingo numbers.

(23) "Selection pool" means the bingo numbers in a selection device that have not been selected.

(24) "Series number" means the number of unique faces contained in a series.

(25) "Set" means a case or cases of paper that contain one (1) of each face in a series.

(26) "Verification system" means a book of bingo faces compiled by the manufacturer or an electronic device created by the manufacturer that:

(a) Lists the unique patterns of numbers on each face by perm number; and

(b) Is used to verify the authenticity of a winning face.

Section 2. Bingo Paper Standards[Conformity]. (1) A licensed distributor of charitable gaming supplies and equipment shall only distribute, in Kentucky, bingo paper conforming to the requirements of this administrative regulation.

(2) A [licensed] charitable organization shall sell to the public only bingo paper conforming to the requirements of this administrative regulation.

(3) Reusable bingo hard cards shall be used only at charity fundraising events.

Section 3[2]. Bingo Paper Construction Standards. (1) The paper used to construct paper bingo cards or faces shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a pack thereby obscuring other numbers or cards.

(2) Perm numbers shall be displayed on the face.

(3) Numbers displayed on the face shall be randomly assigned.

(4) Each set of bingo paper shall be comprised of faces bearing the same serial number on the top sheet of the pack. A serial number shall not be repeated by the same manufacturer within one (1) year.

(5) Bingo paper assembled in packs shall be glued. Staples shall not be used.

(6) A label shall be placed on, or be visible from, the exterior of each bingo paper carton. The label shall list the following information:

(a) Type of product;

(b) Number of packs, pads, or loose sheets;

(c) Series numbers;

(d) Serial number of the top sheet;

- (e) Number of cases;
- (f) Cut of paper; and
- (g) Color of paper.

Section 4[3]. Tracking by Manufacturer. Every manufacturer of bingo paper shall maintain records sufficient to track the bingo paper, by the serial number on the top sheet, from the point of manufacture[manufacturer] to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department[office] staff.

Section 5[4]. Tracking by Distributor. (1) Every distributor of bingo paper shall maintain records sufficient to track the bingo paper, by the serial number on the top sheet, from the point of purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department[office] staff.

(2) The records required under this section shall be deemed sufficient if the distributor:

- (a) Records the name and charitable gaming license or exemption number of the purchaser at the next point of sale; or
- (b) Makes and retains a copy of a valid state identification card that[which] contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

Section 6[5]. Requirements—of Distributor Invoice Requirements. (1) Distributors selling bingo paper to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of bingo paper sold including the number of sheets or packs in a set;
- (f) The serial number of the bingo sets sold;
- (g) The series number of the bingo sets sold;
- (h) The cut of bingo paper sold;
- (i) The color of bingo paper sold;
- (j) The total invoice amount;
- (k) The name of the person who ordered the supplies;
- (l) The name of the person making the delivery;
- (m) The date of delivery or date item was picked up for sale or credit; and
- (n) The place or manner of delivery, including the name and signature of the person taking delivery, if any.

(2) A distributor may deliver bingo paper to an agreed place or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge shall be made in writing to the distributor and a copy shall be sent to the department[office].

Section 7. Bingo Selection and Display Devices. (1) Bingo ball machines and other selection devices, flashboards and other display devices, and other bingo equipment used in the selection and display of game numbers shall be made available for inspection or testing by the department at any reasonable time.

(2) Equipment shall be designed to produce randomness and be free of any defects when used in a bingo game.

(3) A charitable organization shall not use a selection or display device with a defect that was apparent at the beginning of the session. All bingo balls used in the machine or other device shall:

- (a) Be of the same size, shape, weight, and balance;
- (b) Have all other characteristics that control their selection the same; and
- (c) Be clean and free of defects.

(4) A manufacturer may conduct routine maintenance activities and replace secondary components of equipment without prior approval of the department or additional testing if[as long as] this activity does not affect the operation of any equipment or the manner in which a bingo game is played. A record of all routine

maintenance activities shall be maintained for one (1) year and provided to the department upon request.

Section 8. Card-Minding Devices. (1) A card-minding device site system shall:

- (a) Be located at the gaming premises;
- (b) Be operated by the charitable organization;
- (c) Interface with, connect with, control, or define the operational parameters of the card-minding devices;
- (d) Report and transmit the game results ~~pursuant to~~as prescribed by] 820 KAR 1:057;
- (e) Provide security and access levels sufficient so that the internal control objectives are met ~~pursuant to~~as prescribed by] Section 9 of this administrative regulation; and
- (f) Contain a point of sale station.

(2) The card-minding device site system may include the following components:

- (a) A caller verification system;
- (b) Required printers;
- (c) Modem;
- (d) Proprietary executable software;
- (e) Report generation software; and
- (f) An accounting system or database.

(3)(a) A card-minding device and associated site system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and certified by an independent testing facility approved by the department, demonstrated to the department by the manufacturer if requested, and approved by the department.

(b) For a hand-held card-minding device, a device and software that[which] is identical to the device and software intended to be sold, leased, or otherwise furnished to any person for use in the conduct of bingo shall be tested and approved.

(c) For a fixed-base card-minding device, a device that[which] contains identical software to the fixed-based card-minding device intended to be sold, leased, or otherwise furnished shall be tested and approved.

(4) The cost of testing and certification shall be the responsibility of the manufacturer.

(5) The independent testing facility shall certify in writing that the device and proprietary software conform to the restrictions and conditions established[set forth] in this administrative regulation.

(6) Any modifications to a hand-held card-minding device, a fixed base card-minding device, or software, except as provided in subsection (8) of this section, shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer if requested, and approved by the department in the same manner as a new device or new software. Testing and certification shall be at the manufacturer's expense.

(7)(a) The department, in consultation with the independent testing facility, shall determine if all proprietary software and card-minding devices required to be tested by this administrative regulation, as well as other components of card-minding device systems, conform to the requirements and restrictions established[contained] in this administrative regulation and shall notify the manufacturer of its decision in writing.

(b) Upon receipt of the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days thereof.

(c) The department shall either approve or disapprove the card-minding device and software. The department shall inform the manufacturer of its decision within thirty (30) days of the demonstration, or no later than sixty (60) days after the department receives the test results from the independent testing facility. Approval shall be granted in accordance with paragraph (a) of this subsection.

(8) A manufacturer may conduct routine maintenance activities and replace secondary components of a card-minding device system without prior department approval or additional testing if[as long as] this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played, the integrity of any critical or controlled software, or the outcome of a bingo game. A record of all routine maintenance

activities shall be maintained for one (1) year and made available to the department upon request.

(9)(a) If a licensee has knowledge of any defect, malfunction, or problem with a card-minding device system, card-minding device or software that affects the security or the integrity of the bingo game or the card-minding device or system, the licensee shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(b) If the department has knowledge of any problem with a card-minding device system, card-minding device, or software that affects the security or the integrity of the bingo game or the card-minding device or system, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected card-minding device system, card-minding device, or software until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(c) If the department determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected card-minding device systems, card-minding devices, or software, as necessary.

(d) In choosing and directing a particular recall in accordance with paragraph (c) of this subsection, the department shall be guided in each circumstance by any combination of the following factors:

1. The nature of the defect;
2. Whether the defect affected game security;
3. Whether the defect affected game playability;
4. Whether the defect was limited to a specific number of bingo faces;
5. Whether the defect was easily detectable by a charitable organization;
6. Whether the defect was easily detectable by members of the general public;
7. Whether the defect threatens public confidence in the game; or
8. Whether the defect is capable of being used to adversely affect the fair play of the game.

(e) The manufacturer or distributor may correct the defect, if possible, without the issuance of a total recall if the affected card-minding devices and software are not offered for sale, lease, or use until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected card-minding device system, devices, or software may again be offered for sale, lease, or use.

(f) If a recall is necessary, the department shall determine a specific date for the recall of any affected card-minding device system, card-minding device, or software to be completed.

(g) The department shall also determine whether the manufacturer is required to reimburse the charitable organization or distributor.

(10)(a) A distributor or charitable organization shall not add or remove any software programs to an approved card-minding device system without the permission of the manufacturer and the department.

(b) If the department detects or discovers a card-minding device system at a playing location that is using components or software that were required to have been approved by the manufacturer and the department but have not been approved, the card-minding device system shall be determined to have an unauthorized modification and the use of the system shall cease immediately.

Section 9. Card-Minding Device Systems Manufacturer Requirements. (1) A manufacturer of a card-minding device system

shall manufacture each site system to include a point of sale station and an internal accounting system that is capable of recording the charitable organization's sale of all charitable gaming supplies.

(2) (a) A manufacturer of a card-minding device system shall ensure that the site system has internet capability so that the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the site system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(b) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the system prior to the operation of the system in Kentucky.

(c) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least three (3) days prior to the change.

(d) Any reports maintained or generated by the card-minding device system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(3) A manufacturer of a card-minding device system shall manufacture each site system to ensure that an internal accounting system is capable of recording and retaining for a period of not less than twelve (12) months **the following information:**

(a) The serial number of each bingo face sold for card-minding device use;

(b) The price of each face or package sold;

(c) The total amount of the card-minding device sales for each session;

(d) The total number of faces sold for use with card-minding devices for each session;

(e) The serial number of each hand-held card-minding device sold; and

(f) The terminal number or account number associated with each fixed base card-minding device sold.

(4)(a) The information **established[referenced]** in subsection (3) of this section shall be secure and shall not be accessible for alteration during the session.

(b) The site system shall have report generation software with the capability to print all information required to be maintained on the site system's active or archived databases. The total sales activity report shall be completed in the format of Form CG-CMD.

(5) A manufacturer of a card-minding device system shall manufacture each site system to ensure that the applicable point of sale station is capable of printing a receipt for each sale or voided sale of a card-minding device. The receipt shall include the following information:

(a) The date and time of the transaction;

(b) The dollar value of the transaction and quantity of associated products;

(c) The sequential and consecutive transaction number;

(d) The session in which the product was sold;

(e) The serial number of each hand-held card-minding device sold; and

(f) The terminal number or account number for each fixed base card-minding device sold.

(6) A card-minding device system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(7) A manufacturer of a card-minding device system shall manufacture each associated site system to include a caller station verifier that is able to verify winning cards and to print the cards for posting. The caller station verifier shall be capable of posting all balls called for verification purposes and printing an ordered list of the called balls.

(8)(a) Each card-minding device system shall employ safeguards to verify that proprietary software components are authentic copies of approved software components and all components of the card-minding device system are operating with



identical copies of approved software programs.

(b) The system shall have sufficient security safeguards to ensure that any restrictions or requirements of the department or any approved proprietary software are protected from alteration by unauthorized personnel.

(c) Examples of security measures that may be employed to comply with these provisions include the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and key and callback password systems.

(9) A manufacturer of a card-minding device system shall ensure that a card-minding device shall not allow any bingo cards or faces other than those verifiably purchased by the patron to be available for play.

(10) A manufacturer shall not display, use, or otherwise furnish a card-minding device that[which] has in any manner been marked, defaced, or tampered with, or that[which] is otherwise intended to deceive the public or affect a person's chances of winning.

(11) If the card-minding device system is capable of using radio frequency, it shall not be dual frequency.

(12) The card-minding device system shall provide password protection for each charitable organization.

(13) The card-minding device system shall erase, deactivate, or render unplayable the electronic faces on each card-minding device prior to the next scheduled charitable gaming session:

(a) Upon turning off the device after the last bingo game of the charitable gaming session has been played or upon placing the device into a charging unit; and

(b) By a secondary timing method established by the manufacturer.

(14) The card-minding device system shall ensure that patrons purchase additional electronic bingo faces at the site system only.

Section 10. Tracking by Manufacturer of Card-minding Device Systems. (1) Each licensed manufacturer selling, leasing, or otherwise furnishing card-minding device systems in Kentucky shall maintain a single log or other record showing the following:

(a) The date of the transaction with the distributor;

(b) The model, version, and serial number of each hand-held card-minding device;

(c) The account number or terminal number of each fixed base card-minding device;

(d) The model and version number of the site system software; and

(e) The name and license number of the distributor to whom the card-minding device system was sold, leased, or otherwise furnished.

(2) A licensed manufacturer selling, leasing, or otherwise providing a card-minding device system to a distributor for use in Kentucky shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The date of sale and the time period covered by the invoice;

(b) The quantity sold or leased; and

(c) The total invoice amount.

(3) The licensed manufacturer shall maintain physical or electronic copies of the documentation required by this section for a period of thirty-six (36) months.

Section 11. Distributor Requirements for Card-Minding Device Systems. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular device and associated software version have been approved by the department according to this administrative regulation.

(2) If the card-minding devices are used at multiple locations, each location shall have its own separate site system.

(3) Before the complete removal of any card-minding device system, the distributor shall supply a copy of the data files to each charitable organization that[which] used the card-minding device system and to the department.

(4) A distributor shall not display, use, or otherwise furnish a card-minding device that[which] has in any manner been marked,

defaced, tampered with, or that[which] is otherwise intended to deceive the public or affect a person's chances of winning.

(5) Each distributor selling, leasing, or otherwise furnishing card-minding device systems shall maintain a single log or other record showing the following information, to be submitted to the department upon request:

(a) The playing location name, physical address, telephone number, and facility license number, if applicable, where the card-minding device system is located;

(b) The modem number and quantity of card-minding devices at each playing location;

(c) The date the card-minding device system was installed or removed;

(d) The model, version, and serial numbers or terminal numbers of the card-minding devices and site system equipment;

(e) The name and license number of the charitable organization or distributor to whom the card-minding device system was sold, leased, or otherwise furnished;

(f) The name and license number of the manufacturer or distributor from whom the card-minding device system was purchased, leased, or otherwise obtained;

(g) Each contract, lease, or purchase agreement between a distributor of a card-minding device and the charitable organization or other distributor to which a device is furnished; and

(h) The total dollar amount of card-minding device sales or lease transactions regarding each charitable organization to which any card-minding device was furnished during each calendar quarter.

(6) A distributor selling, leasing, or otherwise providing a card-minding device system to a charitable organization or distributor shall provide the charitable organization or distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) The date of sale and the time period covered by the invoice;

(b) The quantity sold or leased; and

(c) The total invoice amount.

(7) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of thirty-six (36) months.

Section 12. Requirements for Use of Card-Minding Device Systems. (1) Before initial use of a card-minding device system, the charitable organization shall ascertain that the particular device and associated software version have been approved by the department for use in Kentucky.

(2) A charitable organization shall not display, use, or otherwise furnish a card-minding device that[which] has in any manner been marked, defaced, tampered with, or that[which] otherwise may deceive the public or affect a player's chances of winning.

(3) If a player's card-minding device malfunctions during a bingo game, it may be repaired or the faces transferred to another card-minding device if it will not interrupt the game.

(4) Each card-minding device shall be limited to offering for play a maximum of seventy-two (72) card faces during any one (1) game of a session.

(5) The charitable organization shall ensure that the card-minding device system does not allow a card-minding device to be used to obtain a bingo prize for any bingo game other than for a game within the bingo session for which the card-minding device was sold.

(6) The department may examine and inspect any card-minding device and site system. The department shall be granted reasonable access to the card-minding devices and unlimited inspection of all parts of the site system.

(7) The charitable organization shall provide the player with a receipt printed on a receipt printer for each sale detailing the transaction. The receipt shall contain, at a minimum, the following information:

(a) A unique transaction number that is printed in continuous, consecutive order and that[which] cannot be reset or altered;

(b) The serial number of the card-minding device issued;

- (c) The date and time the receipt was issued;
- (d) The name of the charitable organization and license number; and
- (e) A description, quantity, purchase price, and total dollar amount of each item purchased.
- (8) The charitable organization shall void the original transaction and issue a new receipt if a player requests a partial or full refund. Additional purchases shall not require voiding of the original transaction.
- (9) A voided transaction shall be treated in the manner established by this section.
- (a) A voided transaction shall be processed immediately.
- (b) If a voided transaction involves a card-minding device, the card-minding device shall be connected to the site system to ensure all electronic bingo cards are erased or deactivated.
- (c) The player shall possess the receipt issued at the time of the purchase of the card minding device before the purchase is voided.
- (d) The word "void" shall be clearly printed on the receipt.
- (e) The player shall write his **[or her]** name, address, telephone number, signature, and amount of refund on the back of the receipt before a partial or full refund may be issued.
- (f) All voided receipts shall be attached to the Total Sales Activity Report printed at the end of each charitable gaming session and maintained with the gaming records.
- (10) If the charitable organization loads the card-minding devices prior to selling them, all unsold card-minding devices shall be voided by the start of the **second/subsequent** game.
- (11) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by subsection (7) of this section.
- (12) If the department or any player requests verification of a winning card face played on a card-minding device, the session chairperson shall print the winning card face and post it in a conspicuous location where it may be viewed in detail. Winning card faces requested for posting shall remain posted for at least thirty (30) minutes after the completion of the last bingo game at that particular charitable gaming session.
- (13) The charitable organization shall reasonably ensure that the internet connection to the site system is operational at all times.
- (14) If the charitable organization sells card-minding devices for a discounted price, or gives them away as a promotion, the site system shall be programmed to account for the discounted item and shall be priced separately from those sold at the regular price. A generic discount key shall not be allowed.
- (15) The charitable organization shall print a Total Sales Activity Report reflecting activity from the time of the initial sale to the end of each bingo session. These records shall be maintained with the charitable gaming session records.
- (16) A manufacturer's representative or distributor's representative may be present during a bingo session only to consult, demonstrate, or train charitable organizations on the operation of the card-minding device system.

**Section 13. Bingo Rules of Play: General Provisions.** (1) All individuals involved in the conduct of a bingo session shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson of the licensed charitable gaming session shall be in full charge of the licensed charitable gaming session, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) Except for braille cards intended for use by blind players, bingo paper or card minding devices shall not be reserved by the charitable organization for any player. Legally-blind players may use their own cards if the charitable organization does not make braille cards available. In accordance with KRS 238.505(15), braille cards shall not be considered gaming supplies and equipment and may be purchased from ordinary sources of supply.

(4) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization except for a licensed charity fundraising event.

(5) If a bingo session is cancelled once it is commenced, a charitable organization may refund a portion of the purchase price

of the bingo paper or card-minding device. A charitable organization shall not continue the session or award the prizes at a later date.

(6) Each charitable organization's gaming supplies shall be maintained in a location separate from another charitable organization's gaming supplies. This location shall be locked and access shall be limited. An extra set of bingo balls shall not be stored at the caller's stand but shall be stored with the other charitable gaming supplies.

(7) A volunteer at a charitable gaming session at which bingo cards or faces are sold shall not purchase or play bingo cards or faces at that session unless the volunteer's duties are complete for the session. Once a volunteer starts playing bingo, that person shall not work as a volunteer for the remainder of that charitable gaming session.

(8) If the charitable organization has house rules concerning its bingo session, the house rules shall:

(a) Be posted in at least two (2) conspicuous locations at the charitable gaming session and announced prior to the commencement of the charitable gaming session, or be listed on the program;

(b) Not be in conflict with KRS Chapter 238 or 820 KAR Chapter 1;

**(c)/(e)** Be followed; and

(d) Include the charitable organization's name and license number.

(9) Every ball in the bingo machine or other selection device shall be displayed for verification at the commencement and at the completion of each bingo session.

(10) Individual bingo paper sheets in a pack shall not be sold as individual bingo paper sheets.

(11) The charitable organization shall buy a complete set of paper and use that paper before starting another set.

(12) A charitable organization shall not separate faces on one (1) paper sheet or any paper sheets in a pack prior to play.

(13) The price for each type of bingo sheet, pack, or package shall be listed on the bingo program.

(14) Bingo paper sheets, bingo paper packs, and bingo paper packages shall be used during the bingo session for which they were purchased. A charitable organization shall not allow a player to carry over purchased, but unused, bingo paper sheets, bingo paper sheet packs, or bingo paper packages to a subsequent bingo session.

(15) A charitable organization shall not allow a player to play bingo paper that was not purchased at that session, except for braille cards **pursuant to subsection 3 of this section[as provided in Section 13(3) of this administrative regulation]**.

(16) The charitable organization shall not duplicate or otherwise make copies of bingo paper.

(17) If a charitable organization sells the same paper packs or paper sheets for different prices, the packs or sheets shall be distinguishable by serial number.

(18) A charitable organization shall not sell bingo paper in a bundle.

(19) If a charitable organization sells bingo paper as a package, the package shall become a unique item with a certain price and the items in the package shall not be sold individually unless a separate serial number is used.

(20) If a charitable organization games in back-to-back sessions, it may pre-sell paper for the second session if a different set of paper is used with a different color or border and a different serial number. The money from the preselling of paper shall be deposited with the second session receipts and the sales recorded on the second session charitable gaming session records. If the price for the presold paper is discounted, the charitable organization shall list this discount on the charitable gaming session program and use a third set of paper with a different serial number.

**Section 14. Playing.** (1) All players shall be physically present at the location where the bingo game is held in order to play the game or claim a prize.

(2) The bingo session shall start when the balls are verified.

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The balls shall be verified before the pickle jar, bonanza ball, or hot ball is selected and called. If a[an] licensed charitable organization is authorized to sell paper or electronic pulltabs during its bingo session, the licensed charitable organization may commence selling paper or electronic pulltabs [no more than two (2) hours] prior to the start of the bingo session with prior approval of the department. All paper or electronic pulltabs sold in this manner shall be reported on the licensed charitable organization's bingo session records.

(3) The caller shall turn off all personal electronic devices and shall not use any personal electronic devices while engaged in the calling of a bingo game.

(4) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(5) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game, which shall also be listed in the bingo program.

(6) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) With the exception of a speed game, display the ball or other device used in a manner allowing the players to see the number;

(c) Cause the ball or other device to be placed in a ball tray or other device so as to prevent it from being placed back into the selection pool; and

(d) Enter each letter and number called on a flashboard or similar device for player viewing.

(7) A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.

(8) It shall be the player's responsibility to notify a volunteer including the chairperson or caller that the player has a winning bingo combination.

Section 15. Pickle Jar, Bonanza Ball, or Hot Ball. (1) When an additional prize is to be awarded if a patron wins on a certain number, the rules of play, the maximum payout, and cost to enter shall be listed on the bingo program. These numbers may be selected and posted before the first game is called.

Section 16. Break-open[Break-Open] Bingo. (1) A break-open bingo game shall begin when, in the presence of players attending the bingo session, the charitable organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate bingo number container. If a flashboard is used, these numbers shall be posted on a board separate from the regular bingo board unless the regular board is capable of keeping track of these numbers separately. The balls shall then be placed back into the selection pool until the game is played on the program.

(2) Sealed bingo paper sheets for a break-open[break-open] break open game may be sold throughout the bingo session. Additional bingo paper sheets for a break-open[break-open] game shall not be sold after the charitable organization resumes calling letters and numbers when the game is played on the program.

(3) A charitable organization may allow players to trade break-open[break-open] bingo faces for new faces.

(4) If the charitable organization allows players to trade break-open[break-open] bingo faces for new faces, two (2) sets of the game faces shall be maintained. One (1) set shall be known as the "original set" and shall be of a different serial number than the second set, known as the "trade in" set.

(5) A charitable organization shall list on the bingo program the price of the original set and the trade-in set.

Section 17. Player Pick. (1) If the charitable organization offers a Player Pick game, the requirements established in this section shall apply.

(2) A player shall select numbers between one (1) and seventy-five (75). A player shall not select more than five (5) numbers for each column. The player may allow the machine to

select the numbers.

(3) Duplicate numbers shall not be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.

(4) Once selected, the machine shall print a face with the selected numbers.

(5) The faces shall conform to the construction and randomization standards established[set forth] in this administrative regulation.

(6) The price of each face and the amount of numbers that will be chosen shall be listed on the bingo program.

(7) The numbers shall be daubed as the balls are called when the game is played as listed on the bingo program.

(8) A player shall win if he or she is the first person to cover the numbers.

Section 18. Continuation Games. (1) Multiple patterns may be played on one (1) bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls shall not be returned to the selection pool after a winner has been determined and verified.

(2) Each winning pattern shall be verified independently.

Section 19. Progressive Bingo Games. (1)(a) Progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on progressive games are included in the prize limit established in KRS 238.545(1), regardless of the method by which a player is eligible to participate.

(b) The charitable organization shall be responsible for ensuring that the value of any progressive bingo game prize, when added to the values of the other prizes of the same date or session, does not exceed the statutory prize limit.

(c) All receipts on progressive bingo games shall be reported to the department as gross receipts for the date collected pursuant to KRS 238.550.

(2) Once a progressive bingo game has been started, the game shall be played in the same manner at every session until the prize is awarded. The jackpot prize shall be offered at each successive bingo session for that charitable organization until the jackpot prize has been won.

Section 20. Lucky Ball. (1) If the charitable organization offers Lucky Ball play, the requirements in this Section shall apply.

(2) Players may purchase one (1) Lucky Ball ticket prior to the beginning of a bingo session, and before purchasing any other bingo paper. Each player shall be limited to one (1) Lucky Ball ticket per bingo session.

(a) Lucky Ball tickets shall consist of a pre-printed form with space provided for the player's Lucky Ball number, name, date, and the name of the ticket seller to be written in. The Lucky Ball tickets shall also have pre-printed sequential ticket numbers for tracking and verification purposes.

(b) The cost of a Lucky Ball ticket shall not exceed five (5) dollars. Money from Lucky Ball ticket sales shall be retained by the charitable organization as part of the gaming proceeds from the gaming session.

(c) Each player may choose his[or her] own Lucky Ball number at the time of purchase of the ticket, and shall immediately write that number, in ink, on the Lucky Ball ticket, along with the player's name, the date, and the name of the ticket seller.

(d) Once the information is written on the Lucky Ball ticket, the carbon copy or electronic duplicate copy of the ticket shall be retained by the charitable organization, and all ticket copies shall be placed in numerical order as soon as possible after the start of a gaming session. The charitable organization shall verify that the player has written a correct name on the ticket by checking photo ID at the time of sale, and shall keep a log of tickets sold and Lucky Ball numbers to verify that any tickets are used only by the ticket buyer and are not traded or sold during the session.

(e) Once the player purchases bingo paper for play in that session, the player shall write their Lucky Ball number on the back of each piece of bingo paper to be put into play.

(3) During bingo play, any player who purchased a Lucky Ball

number may mark that number as a free space, or "wildcard" number to mark their bingo paper to form bingos, regardless of whether that number is selected by the caller in regular play.

(4) No selling, trading, or exchange of any kind of Lucky Ball tickets or bingo paper may take place during a bingo session between players of their chosen Lucky Ball numbers. All monitors, sellers, and volunteers shall observe whether a player's Lucky Ball number matches the number written on the back of the bingo paper to prevent selling, trading, or exchange of Lucky Ball tickets or bingo paper.

(5) Verifying a bingo.

(a) Once a player announces a bingo, a volunteer or monitor reads the perm number from the bingo paper to the caller. The caller then enters the perm number into the console.

(b) If the console does not verify a bingo, and if the Lucky Ball tickets cannot be verified electronically by the perm numbers, the caller must ask if there is a Lucky Ball.

(c) If there is a Lucky Ball, the volunteer calls out only the receipt number on the Lucky Ball ticket to the caller, in the presence of a neutral player.

(d) The caller then communicates the receipt number to the office or to the person holding the carbon copies of the Lucky Ball tickets in numerical order. The charitable organization shall verify that the Lucky Ball ticket had not been sold, traded, or exchanged by the players, by checking the photo ID of the winning player and checking to ensure the Lucky Ball number was written on the back of the bingo paper.

(e) After the receipt is located and the receipt numbers verified, the Caller shall announce the Lucky Ball number to the Monitor and the audience. The neutral player shall still be viewing the ticket to verify the bingo. The Lucky Ball number of the winning player may or may not be the last number called.

(f) Once a bingo is verified, the caller shall announce the last number called and the number of valid bingos for that game. The same verification procedure shall be followed in the case of multiple bingos until all are verified.

Section 21. Winner Verification and Registration. (1) A manufacturer of bingo paper shall make available for purchase a verification book or other verification system for all paper manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of paper in play.

(3) When a player declares a winning bingo, the steps established in this subsection shall be followed for winner verification.

(a) The game shall be stopped before the next number is called. If the next number has been selected, it shall be secured to ensure that if the declared "bingo" is invalid, the game will continue.

(b) If an electronic verifier or verifier book is used, a volunteer for the charitable organization shall:

1. Show the winning face to a neutral player, who shall be a player other than the winner; and
2. Call back the perm number while in front of the neutral player.

(c) If any other verification system is used, a volunteer for the charitable organization shall:

1. Show the winning face to a neutral player, who shall be a player other than the winner; and
2. Call back the winning combination while in front of the neutral player.

(4) The caller shall ask at least twice if there are any other winners before announcing the close of the game. If playing a continuation game, the caller shall ask at least twice if there are any other winners before the close of the game.

(5) If more than one (1) winner is declared in a bingo game, prizes shall be awarded as established in this subsection.

(a) Cash prizes shall be divided equally among the verified winners.

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall

be awarded.

Section 22. Prizes. (1) If a merchandise prize or discount is available to everyone, it shall be considered a promotional item and counted as an expense.

(2) If a merchandise prize or discount is not available to everyone, it shall be included in the prize limit established in KRS 238.545(1) at its fair market value. It shall be included in expenses for purchased prizes at actual cost. If the merchandise prize is a gaming supply, it shall be included in supplies expense at actual cost.

(3) The fair market value of bingo paper, a card-minding device, electronic pulltab device, or paper pulltabs awarded as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, electronic pulltab device, or paper pulltab at that charitable gaming session.

(4)(a) If bingo paper is awarded as a door prize or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The charitable organization shall retain the voucher with its session records.

(5) If bingo paper is awarded as a promotional item, the description of the paper shall be listed on the program with "free" or "promotional" listed as the price. If the charitable organization also sells that type of paper, a separate set of paper with a separate serial number shall be used.

(6)(a) If a card-minding device or electronic pulltab device is awarded as a door prize or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per session.

(d) The charitable organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher and package involving a card-minding device or electronic pulltab device.

(7) If a card-minding device is awarded as a promotional item, the description of the promotional package shall be listed on the program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(8) If a charitable organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the charitable gaming session records.

(9) If the charitable organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the charitable gaming session records.

(10) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits

loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session records.

(11) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(12) A voucher shall be redeemed on the same day as awarded.

Section 23. Incorporation by Reference. (1) Form CG-CMD, "Total Sales Activity Report (2018)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Charitable Gaming  
(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:050. Raffles[Raffle standards].**

RELATES TO: KRS 238.545[(3)], 238.550[(5)]

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(2)] authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and [KRS 238.515(9) authorizes the department] to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards [for the construction and distribution of raffle materials and] for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1)[Raffles may be conducted either with paper tickets or electronic tickets.

(2) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered.

(2)[(3)] The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3)[(4)] The following information shall be on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over **\$500**[five hundred (500) dollars].

(4)[(5)] The requirements of subsections (2) and (3)[and (4)] of this section shall be waived if:

(a) The raffle tickets sell for five (5) dollars or less, or

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event or a licensed special limited charity fundraising event.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

(3) If the prize to be awarded is the jackpot of a progressive raffle board, the charitable organization's charitable gaming session records shall report in the gross receipts total all startup cash, monies derived from raffle ticket sales, and any other contribution to the jackpot.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing.[~~(4) Raffles may not be conducted with both paper and electronic tickets in the same raffle.~~]

(4)[(5)] Before drawing, the charitable organization shall place the seller's portion of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.**[Section 4. Random Number Generator Requirements. (1) Random number generators shall not be sold, leased, or otherwise furnished to a charitable organization for use in the conduct of raffles until an identical sample device containing identical proprietary software has been certified by an independent testing facility that upholds the standards of integrity established by the department. The cost of testing shall be borne by the manufacturer of such equipment.**

**(2) The random number generator shall conform, at a minimum, to the requirements and restrictions set forth in KRS 238.505 and KRS 238.545.**

**(3) A random number generator used in the conduct of raffles shall produce output that is statistically random.**

**(4) A random number generator used in the conduct of raffles shall produce output that is unpredictable.**

**(5) A random number generator used in the conduct of raffles shall produce output that is nonrepeating. A random number generator shall not be initialized to reproduce the same output stream that it has produced before, nor shall any two instances of a random number generator produce the same stream as each other.**

**(6) A random number generator used in the conduct of raffles that provides output scaled to given ranges shall be capable of producing every possible outcome of a game according to its rules, and use an unbiased algorithm.**

**(7) If the department determines that a defect actually exists, and it affects game's security or otherwise threatens public confidence in the game, the department may require the manufacturer to issue a total recall of all affected random number generators.**

Section 4[5]. Claiming Raffle Prizes. (1) If the winner is not present at the drawing, the charitable organization shall notify the winner within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(2) If a winner does not wish to claim the prize but wishes to donate it to the charitable organization, the charitable organization shall obtain a written statement of the winner's intention within the thirty (30) day period. A charitable organization shall not accept the donation to the charitable organization of a prize won if doing so would violate KRS 238.540.

(3) If a raffle winner does not claim the prize or donate it to the charitable organization within thirty (30) days after having been contacted by certified mail, or if the raffle winner is ineligible by law to claim the prize, the charitable organization shall notify the department and draw another ticket in the presence of department

personnel.

(4) The requirements of subsections (1), (2), and (3) of this section shall be waived, and the charitable organization shall be allowed to draw tickets until a winner is present if:

- (a) The raffle tickets sell for five (5) dollars or less;
  - (b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or
  - (c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.
- ~~Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered.~~

~~(2) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.~~

~~(3) The following information shall be printed on each ticket:~~

- ~~(a) The date and time for each drawing;~~
- ~~(b) The location of each drawing;~~
- ~~(c) The name of the charitable organization conducting the raffle;~~
- ~~(d) The charitable organization's license number or exemption number, if any;~~
- ~~(e) The price of the ticket; and~~
- ~~(f) Each prize to be awarded with a fair market value over \$500.~~

~~(4) The requirements of subsections (2) and (3) of this section shall be waived if:~~

- ~~(a) The raffle tickets sell for one (1) dollar or less;~~
- ~~(b) The raffle sales are initiated and concluded and all winners are selected at a special charity fundraising event; or~~
- ~~(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charity games.~~

~~Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.~~

~~(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.~~

~~Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.~~

~~(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.~~

~~(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing, and all tickets that were not sold. If all sold tickets are not returned or accounted for, the organization shall not conduct the raffle and shall refund all raffle ticket purchases.~~

~~(4) Before drawing, the charitable organization shall place each stub or other detachable section or duplicate of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.~~

~~(5) If the winner is not present at the drawing, the organization shall notify the winner by certified mail within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.~~

~~(6) If a winner does not wish to claim the prize but wishes to donate it to the organization, the winner shall provide the organization a written statement within the thirty (30)-day period stating that the winner wishes to donate the prize to the organization. A prize winner shall not donate the prize back to the organization if to do so would violate KRS 238.540(7).~~

~~(7) If a raffle winner does not claim the prize or donate it to the organization within thirty (30) days after having been contacted, the organization shall notify the Department of Charitable Gaming and draw another ticket in the presence of department personnel.~~

~~(8) The requirements of subsections (5), (6), and (7) of this section shall be waived, and the organization shall be allowed to~~

~~draw tickets until a winner is present if:~~

- ~~(a) The raffle tickets sell for one (1) dollar or less;~~
- ~~(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or~~
- ~~(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.~~

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Charitable Gaming  
(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:055. Charity fundraising event standards.**

RELATES TO: KRS 238.505, 238.515[(2), (4), (9)], 238.535, 238.545, 238.547

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)], 238.545[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized by KRS 238.515[(2)] to establish and enforce reasonable standards for the conduct of charitable gaming. ~~[KRS 238.545(4) requires a license in order to conduct a charity fundraising event.]~~ This administrative regulation establishes standards, fees, and procedures for the conduct of charity fundraising events and special limited charity fundraising events.

Section 1. Charitable Fundraising Event Licensing and Standards. ~~[Issuance of License] (1) At least thirty (30) days prior to the scheduled date for a charity fundraising event, a licensed charitable[An] organization shall submit a complete and[.] accurate[, and verifiable] application on Form CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application[, for a charity fundraising event at least thirty (30) days prior to the scheduled date for the charity fundraising event].~~

~~(2) Each application for licensure under this administrative regulation shall be accompanied by:~~

- ~~(a) A twenty-five (25) dollar fee; and~~
- ~~(b) A copy of the executed lease for the charitable gaming facility, if applicable[A processing fee of twenty-five (25) dollars shall accompany each application for licensure].~~

~~(3)[When the application is filed, the organization shall provide the department with a copy of the executed lease, if applicable.~~

~~(4) All information requested by the department shall be submitted and reviewed before a license may be granted.~~

- ~~(5)[The department shall issue a license if the applicant:~~
- ~~(a) Possesses a regular charitable gaming license; and~~
- ~~(b) Has met the requirements for licensure established/set forth in KRS 238.505[(8) and 238.545(4)].~~

~~(4)[(6)] The event shall not be advertised nor preregistrations taken until a license is issued.~~

~~(5)[(7)] Once a license is issued, players may preregister for the event prior to the day of the event only if payment is received by the charitable organization[credit card, check, or electronic fund transfer].~~

~~(6)[(8)] Pursuant to its discretion under KRS 238.505(8), the department has determined that] Charity[charity] game tickets [or pulltabs] shall not be an approved game of chance at a charity~~



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fundraising event held by an exempt charitable organization.

Section 2. Special Limited Games Played at a Charity Fundraising Event. The department shall grant approval to play special limited games at a charity fundraising event if the information contained in the application shows[and the totality of the circumstances show] that the event meets the requirements of KRS 238.545[(4)(d)].

Section 3. Volunteers. (1) All individuals involved in the conduct of a charity fundraising event or a special limited charity fundraising event shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall:

- (a) Be in charge of the charity fundraising event or special limited charity fundraising event[~~licensed gaming occasion~~];
- (b) Supervise and direct all volunteers; and
- (c) Be responsible for assuring the proper receipt and recording of gaming funds.

Section 4. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, scrip, or imitation money shall not be considered charitable gaming supplies or equipment and may be purchased from ordinary sources of supply. The licensed charitable organization shall not pay for poker tables, blackjack tables, prize wheels or chips, scrip, or imitation money from the charitable gaming account.

(2) Roulette wheels and craps tables shall be considered charitable gaming supplies and shall be obtained from a licensed distributor. The licensed charitable organization shall pay for roulette wheels and craps tables from the charitable gaming account.

(3) If special limited charity games are played, the licensed charitable organization shall provide the department with a copy of the executed contract for the use of those supplies no later than thirty (30) days following the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 5. Expenses. (1) The licensed charitable organization shall pay the gaming expenses for the charity fundraising event or special limited charity fundraising event from the gaming account. All other expenses shall be paid from the general account.

(2) If an expense is both a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

(3) Food, beverages, and other items provided to participants without additional payment at an event where only gaming activity takes place shall be considered a promotional expense, if all participants are equally eligible.

Section 6. Special Limited Charity Fundraising Event Licensing and Standards. (1) A licensed charitable organization shall submit a complete, accurate, and documented application on Form CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application, for a special limited charity fundraising event, at least thirty (30) days prior to the scheduled date for the event.

(2) A fee of twenty-five (25) dollars shall accompany each application for licensure under this administrative regulation.

(3) When the application is filed, the licensed charitable organization shall provide the department with a copy of the executed lease for a licensed gaming facility, if applicable.

(4) The department shall issue a license, if the applicant possesses a regular charitable gaming license and has met the requirements for licensure established[set forth] in KRS 238.505.

(5) The event shall not be advertised nor preregistrations taken until a license is issued.

(6) Once a license is issued, players may preregister for the event prior to the day of the event only if payment is received by the licensed charitable organization.

(7) A central bank shall be maintained in accordance with KRS 238.547.

(8) For all games that require a central bank to be used:

(a) The amount of money received for selling chips, scrip, or imitation money shall be the gross receipts;[f:]

(b) All chips, scrip, or imitation money redeemed shall be the payouts; and

(c) All money remaining shall be the adjusted gross receipts.

(9) Games requiring a predetermined amount of chips, scrip, or imitation money shall be pre-counted. Accurate records shall be kept of all chips, scrip, or imitation money sales, whether the sale is an initial entry fee or a later purchase of chips, scrip, or imitation money.

(10) If the special limited charity games are played as a tournament, then:

(a) A record of attendance shall be kept for the special limited charity games; and

(b) The cost to enter, the cost of the buy backs, the cost of the add ons, the rules of the game, the manner for raising blinds or closing tables, and the prizes shall be listed on the gaming session program. The prizes may be listed as a percentage of the receipts.

Section 7[6]. Incorporation by Reference. The following items are incorporated by reference:

(1) Form CG-Schedule A, "Charity Fundraising Event or Special Limited Charity Fundraising Event License Application (2018)", [5/45] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Charitable Gaming  
(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:057. Recordkeeping[Accurate records].**

RELATES TO: KRS 238.536, 238.550[(5)], 238.560[(2)]

STATUTORY AUTHORITY: KRS 238.515[(4),—(9)], 238.550[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(4)] and 238.550[(5)] authorize the Department of Charitable Gaming[department] to establish and enforce standards off[er] accounting, recordkeeping, and reporting to the department to ensure charitable gaming receipts are accounted for properly[~~properly accounted for~~][~~counted and reported~~]. This administrative regulation establishes the minimum requirements for accounting, recordkeeping, and reporting to the department and establishes allowable charitable gaming expenses[accurate records].

Section 1. Bank Account and Records. (1) A charitable[~~A licensed charitable gaming~~] organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the charitable organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account.

(3) All receipts and donations from each charitable gaming session~~[occasion]~~ shall be deposited by the second business day following the charitable gaming session~~[occasion]~~ at which they were received. The deposit for each charitable gaming session~~[occasion]~~ shall be made separately and shall not be combined with the deposit from any other charitable gaming session~~[occasion]~~.

(4) All types of deposits, including startup cash, returned~~[bad]~~ checks collected and check collection fees, progressive game carry forward, cash prizes not awarded, and adjusted gross receipts, shall be listed separately on the deposit reconciliation sheet~~[,]~~ and the deposit slip~~[, if possible]~~. Each individual check shall be listed separately on the deposit slip. If a register tape is run listing the amounts of the individual checks, it may be attached to the deposit slip. Total cash and coins shall be listed separately. The charitable organization shall keep a copy of the deposit slip.

(5) Checks that have been returned for insufficient funds that have not been collected shall be retained by the charitable organization for three (3) years following the close of the calendar year in which the check was issued. If the check has been turned over~~[to someone else]~~ for collection, the charitable organization shall retain ~~[keep]~~ a copy of the check with contact information for ~~[regarding]~~ the person or entity collecting the check.

(6) Monthly bank statements and reconciliations for all accounts shall be maintained by the charitable organization for three (3) years following the close of a calendar year.

(7) Bank image copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be made available to the department upon request~~[Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be provided to the department upon request]~~.

(8) Gross receipts shall include the money received from the sale of raffle tickets, bingo cards or faces, pickle jars, bonanza balls,~~[or]~~ hot balls, card-minding devices, pulltabs, electronic pulltab devices and electronic pulltabs, charity fundraising event games, special limited charity fundraising event games, returned~~[bad]~~ check collections, credit card fees collected by a charitable organization at a charitable gaming session, and any~~[reasonable]~~ check collection fees minus returned~~[bad]~~ checks.

Section 2. Start-up Cash. (1) If the source of start-up cash is not the charitable gaming account, the source of the start-up cash shall be identified on the charitable gaming session~~[occasion]~~ sheet and signed by the chairperson of the charitable organization.

(2) Start-up cash from one (1) charitable organization shall not be commingled with the start-up cash from another charitable organization. The start-up cash shall be identified on the check withdrawing the funds and on the deposit slip~~[, if possible]~~.

Section 3. Charitable Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the department.

(2) A charitable~~[an]~~ organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer generated record.

(3) Charitable organizations shall prepare and maintain accurate and adequate corporate or other organizational records, such as~~[including]~~ articles of incorporation, minutes of board of directors meetings, and resolutions.

(4) Charitable organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(5) All records shall be made available for inspection and audit at the request of the department.

(6) Any charitable organization's records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation may be obtained~~[retained]~~ by the department~~[or its~~

employees or agents]. The department shall provide a written receipt of the records at the time of taking possession~~[removal]~~.

(7) Charitable organizations shall provide records requested by the department~~[, or any of its employees,]~~ within ten (10) calendar days, unless a longer response time is granted~~[allowed by the request]~~. ~~[(8) An organization shall perform an inventory and obtain permission of the department before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof. An organization may also donate gaming supplies to the department for demonstration and training purposes if the department so requests.]~~

(9) When an organization ceases to game, the organization shall:

(a) Perform a final inventory;

(b) 1. Return all unused product to a distributor;

2. Donate the product to another organization with the permission of the department or, if another organization does not want the gaming supplies, they may be donated to the department, upon request, for training and demonstration purposes; or

3. Destroy the product with the permission of the department; and

(c) Spend or disburse the charitable gaming funds consistent with its charitable purpose.]

Section 4. Charitable Gaming Session Records. (1) Each charitable organization shall prepare and maintain records for each charitable gaming session. The charitable gaming session records shall be prepared or completed by a volunteer or chairperson of the charitable organization. The charitable gaming session records shall not be completed by an independently compensated bookkeeper.

(2) Gaming proceeds shall be counted by an officer or a chairperson of the charitable organization and the count shall be verified. A count may be verified by a volunteer.

(3) A charitable gaming session record shall contain:

(a) The date of the charitable gaming session;

(b) The name and license number of the charitable organization conducting the charitable gaming session;

(c) The name and address of the donor of every donated prize with a fair market value in excess of \$500; and

(d) A deposit reconciliation worksheet that~~[which]~~ records:

1. All currency, coins, checks, and credit card receipts available for deposit;

2. All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, returned checks collected and check collection fees, and all other gaming receipts that should be available for deposit;

3. Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the charitable gaming session records;

4. The amount of donations received at the charitable gaming session that~~[which]~~ will be deposited into the general account;

5. The printed name and signature of the chairperson in charge of the charitable gaming session;

6. The printed name and signature of the person taking the deposit from the charitable gaming session;

7. The printed name and signature of the person making the deposit, if different from the person taking the deposit; and

8. The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash.

(4) If a charitable organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the charitable gaming session records.

(5) If a charitable organization offers coupons for pulltabs or electronic pulltab devices, the type and number of pulltabs, electronic pulltab devices, and credits loaded on each device, if any, given away shall be recorded on the charitable gaming

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session records and on CG-FIN Attachment C and D. The coupon shall be retained with the charitable gaming session records.

(6) If the charitable organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the charitable gaming session records.

(7) If the charitable organization sells gift certificates for pulltabs or electronic pulltab devices, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, the type and number of pulltabs, electronic pulltab devices, and credits loaded on each device, if any, given away shall be recorded on the charitable gaming session records and on CG-FIN Attachment C and D. The gift certificate shall be retained with the charitable gaming session records.

(8) If the charitable organization plays a paper pulltab game that[which] contributes in whole or in part to a progressive raffle jackpot, the charitable organization shall report its deposits and receipts on Worksheet WS-06c, Worksheet WS-14b, and Worksheet WS-15a.

(9) All charitable gaming receipts and records shall be kept separate from noncharitable gaming receipts and records.

(10) All charitable gaming session records shall be retained by the charitable organization for a period of three (3) years. Charitable gaming session records shall be made available for inspection and audit by the department upon request.

(11) Charitable organizations shall provide records requested by the department within ten (10) calendar days unless a longer response time is requested and granted by the department.

Section 5. Bingo Paper Sale Records. Bingo paper sale records shall contain the following information:

(1) Attendance determined by headcount of number of people playing bingo at a charitable gaming session;

(2) Each type of bingo paper being sold;

(3) The serial number of the set of each type of paper sold;

(4) The number of each type of bingo paper given away with the voucher being redeemed attached to the charitable gaming session records, if applicable;

(5) Number of each type of bingo paper destroyed;

(6) The number of each type of bingo paper sold;

(7) The price of each type of bingo paper sold;

(8) The number of pickle jar, bonanza ball, or hot ball games sold;

(9) The price of pickle jar, bonanza ball, or hot ball games and whether the price is per person or per pack;

(10) The number of player pick bingo games sold;

(11) The price of each player pick bingo game sold;

(12) The amount of money expected to be received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session;

(13) The amount of money actually received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session;

(14) The cash short or cash over from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that charitable gaming session;and/

(15) The sales report printed from the player pick machine that includes the number of games sold, price for each game, and the amount of money expected from the sale of player pick games for that charitable gaming session;

(16) Records of all carryover or cumulative bingo games played, which shall contain the following information:

(a) The name of each progressive bingo game in play;

(b) The amount carried over from the previous charitable gaming session;

(c) The receipts from the current charitable gaming session;

(d) The amount paid out for the current charitable gaming session; and

(e) The amount carried forward to the next charitable gaming session;

(17) A copy of the charitable gaming session program, which shall include:

(a) The charitable organization name and license number;

(b) A specific description of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(18) Form CG-Vol.

Section 6. Bingo Payout Records. (1) Bingo payout records shall contain the following information:

(a) A list of all bingo games that will be played at that charitable gaming session;

(b) Each pickle jar, bonanza ball, or hot ball game available to be awarded;

(c) The prize expected or available to be awarded for each bingo game and door prize;

(d) The prize that was actually awarded for each bingo game and door prize;

(e) A notation for the prize awarded for each bingo game and door prize, specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise, the cost of the merchandise and the fair market value of the merchandise;

(f) If a voucher was issued for card-minding devices or bingo paper, the fair market value of the card-minding devices or bingo paper;

(g) The total amount of all cash awarded for bingo prizes and door prizes;

(h) The total amount of all checks issued as bingo prizes and door prizes;

(i) The total cost and fair market value of all merchandise awarded for bingo prizes and door prizes;

(j) A grand total of cash, checks, and fair market value of merchandise awarded for bingo prizes and door prizes, which shall not exceed \$5,000; and

(k) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check.

(2) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, door prize, and/or promotional item, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded on the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales. It shall be recorded as a cash payout on the bingo payout session record, and it shall be included as a gross receipt on the charitable gaming session's pulltab record and on CG-FIN Attachment C and D.

Section 7. Card-minding Device Records. Card-minding device records shall contain the following information:

(1) The type of programs loaded, including the number of faces;

(2) The number of units rented for each type of program;

(3) The number of each type of card-minding device rental given away, with the redeemed voucher attached to the charitable gaming session records;

(4) The number of units voided for each type of program;

(5) The price per unit for each type of program;

(6) The amount of money expected to be received from the rental of card-minding devices;

(7) The actual amount of money received from the rental of card-minding devices for that charitable gaming session;

(8) The cash short or cash over from the rental of card-minding devices for that charitable gaming session;

(9) The total sales activity report completed on Form CG-FIN;

(10) A copy of the charitable gaming session program, which shall include:

(a) The charitable organization name and license number;

(b) A specific description of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(11) Form CG-Vol.

Section 8. Pulltab Records. (1) Pulltab records shall contain the following information for each charitable gaming session:

- (a) The name, serial number, and form number of all games played;
  - (b) The name of all progressive jackpot games in play during that charitable gaming session;
  - (c) The ticket count for each pulltab game sold;
  - (d) The price for each ticket;
  - (e) The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;
  - (f) If a pulltab is awarded as a pulltab prize, the information required by subsection (2) of this section;
  - (g) The prize that was actually awarded for each pulltab game, including the progressive jackpot games;
  - (h) A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
  - (i) If a pulltab game was played in conjunction with a progressive jackpot game, as designed by the manufacturer, the amount contributed to the progressive jackpot;
  - (j) The cash short or cash over for each charitable gaming session with pulltabs;
  - (k) The total amount of all cash awarded for pulltab prizes;
  - (l) The total amount of all checks issued as pulltab prizes;
  - (m) The total cost of all merchandise awarded for pulltab prizes;
  - (n) If a check from the charitable organization's charitable gaming account was issued as a pulltab prize instead of cash, the number of the check;
  - (o) The total amount of money from any incomplete sale of pulltab games;
  - (p) Records of any progressive pulltab games sold, which shall contain the following information:
    - 1. The name of each progressive pulltab jackpot game in play;
    - 2. The amount carried over from the previous charitable gaming session;
    - 3. The receipts from the current charitable gaming session;
    - 4. The amount paid out for the current charitable gaming session;
    - 5. The amount carried forward to the next charitable gaming session; and
    - 6. The serial number of all games that contributed to the prize pool; and
- (q)(r) Form CG-Vol.
- (2) If a pulltab is awarded as a pulltab prize, the person in charge of pulltab payouts shall purchase the pulltabs from the deal being awarded as the prize by transfer of cash from the deal being sold to the deal being awarded as the prize. It shall be recorded as a cash payout for the deal being sold and it shall be included as a gross receipt for the deal being awarded as a pulltab prize and on CG-FIN Attachment C and D.

Section 9. Electronic Pulltab Device Records. Electronic pulltab device records shall contain the following information:

- (1) The name, serial number, and form number of all electronic pulltab games played;
- (2) The ticket count for each electronic pulltab game sold;
- (3) The price for each electronic pulltab ticket sold;
- (4) The name of all electronic progressive jackpot games in play during that charitable gaming session;
- (5) The prize expected or available to be awarded for each electronic pulltab game;
- (6) The amount of money expected to be received from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;
- (7) The actual amount of money received from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;
- (8) The cash short or cash over from the sale of electronic pulltab devices and electronic pulltabs at a charitable gaming session;

(9) The electronic pulltab receipts and payouts report, Form CG-EPRP;

(10) All information required under Section 5 of this administrative regulation; and

(11) Form CG-Vol.

Section 10. Raffle Records. (1) If the raffle tickets sell for \$100[one hundred (100) dollars] or more, the raffle records shall contain the following information:

- (a) The number of raffle tickets printed;
  - (b) The sales price for each ticket;
  - (c) The date raffle ticket sales began;
  - (d) The date the raffle drawing was held;
  - (e) A voided raffle ticket or copy of a raffle ticket;
  - (f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;
  - (g) The total amount of money collected for the raffle event;
  - (h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
  - (i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
  - (j) Total cash short or cash over amount from raffle ticket sales for the raffle event;
  - (k) A list of all raffle prizes awarded;
  - (l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
  - (m) The total amount of all cash awarded for raffle prizes;
  - (n) The total amount of all checks issued as raffle prizes;
  - (o) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
  - (p) Each winning ticket stub;
  - (q) All unsold tickets;
  - (r) A list of all raffle expenses including a copy of all invoices supporting each expense; and
  - (s) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23d, Worksheet-23e, and, when applicable, Worksheet, WS-23f.
- (2) If the raffle tickets sell for fifty (50) dollars to \$100, the raffle records shall contain the following information:
- (a) The number of raffle tickets printed;
  - (b) The sales price for each ticket;
  - (c) The date raffle ticket sales began;
  - (d) The date the raffle drawing was held;
  - (e) A voided raffle ticket or copy of a raffle ticket;
  - (f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;
  - (g) The total amount of money collected for the raffle event;
  - (h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
  - (i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
  - (j) Total cash short or cash over amount from raffle ticket sales for the raffle event;
  - (k) A list of all raffle prizes awarded;
  - (l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
  - (m) The total amount of all cash awarded for raffle prizes;
  - (n) The total amount of all checks issued as raffle prizes;
  - (o) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
  - (p) Each winning ticket stub;
  - (q) A list of all raffle expenses including a copy of all invoices supporting each expense; and
  - (r) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b),

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the organization shall report its session record using Worksheet WS-23c, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

(3) If the raffle tickets sell for more than five (5) dollars but less than fifty (50) dollars, the raffle records shall contain the following information:

- (a) The number of raffle tickets printed;
  - (b) The sales price for each ticket;
  - (c) The date raffle ticket sales began;
  - (d) The date the raffle drawing was held;
  - (e) A voided raffle ticket or copy of a raffle ticket;
  - (f) The total amount of money collected for the raffle event;
  - (g) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
  - (h) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
  - (i) Total cash short or cash over amount from raffle ticket sales for the raffle event;
  - (j) A list of all raffle prizes awarded;
  - (k) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
  - (l) The total amount of all cash awarded for raffle prizes;
  - (m) The total amount of all checks issued as raffle prizes;
  - (n) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
  - (o) Each winning ticket stub;
  - (p) A list of all raffle expenses including a copy of all invoices supporting each expense; and
  - (q) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23b, Worksheet-23e, and, when applicable, Worksheet, WS-23f.
- (4) If the raffle ticket sells for five (5) dollars or less, the raffle records shall contain the following information:
- (a) The beginning and ending serial number or ticket number for each roll of tickets sold or the beginning and ending number of the tickets printed;
  - (b) The quantity of tickets sold;
  - (c) The sales price of the tickets;
  - (d) The date of the raffle;
  - (e) The total amount of money collected for the raffle event;
  - (f) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
  - (g) Total cash short or cash over amount from raffle ticket sales for the raffle event;
  - (h) A list of all raffle prizes awarded;
  - (i) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
  - (j) The total amount of all cash awarded for raffle prizes;
  - (k) The total amount of all checks issued as raffle prizes;
  - (l) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
  - (m) Each winning ticket stub; and
  - (n) A list of all raffle expenses, including a copy of all invoices supporting each expense.
  - (o) Nothing in this subsection shall prohibit an organization from using preprinted tickets for raffle tickets that sell for five (5) dollars or less, but the organization shall maintain a session record that complies with Section 10(3) of this administrative regulation if it sells preprinted tickets for five (5) dollars or less.
  - (p) If the raffle is being conducted on a special event raffle license issued by the department pursuant to KRS 238.535(14)(b), the organization shall report its session record using Worksheet WS-23a, Worksheet-23e, and, when applicable, Worksheet, WS-23f.

Section 11. Charity Fundraising Event Records. (1) Charity fundraising event records shall contain the following information:

- (a) The name of each game of chance played;
  - (b) The price to play each game of chance;
  - (c) The adjusted gross receipts from the sale of each game of chance;
  - (d) The grand total of adjusted gross receipts received from the play of all games of chance;
  - (e) The total amount of all checks issued for each game of chance prize and door prize;
  - (f) The total cost of all merchandise awarded for each type of game of chance prize and door prize;
  - (g) If a check from the charitable organization's charitable gaming account was issued as a prize instead of cash, the number of the check;
  - (h) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records;
  - (i) If pulltabs are sold, accurate pulltab records;
  - (j) If a raffle is conducted, accurate raffle records; and
  - (k) If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day.
- (2) Special limited game records for a charity fundraising event shall contain:
- (a) The name of each game to be played;
  - (b) The adjusted gross receipts for each game for each day of the charity fundraising event; and
  - (c) A list of all merchandise prizes awarded and the cost.

Section 12. Special Limited Charity Fundraising Event Records. (1) Special limited charity fundraising event records shall contain the following information for special limited charitable gaming events:

- (a) The name of each game played;
  - (b) The quantity of scrip, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of scrip, chips, or imitation money;
  - (c) The quantity of scrip, chips, or imitation money the central bank sold during the special limited charity fundraising event;
  - (d) The amount of money received by the central bank from the sale of scrip, chips, or imitation money;
  - (e) Cash short or cash over from the sale of scrip, chips, or imitation money;
  - (f) The quantity of scrip, chips, or imitation money collected by the central bank and redeemed for prizes;
  - (g) Prizes awarded by the central bank;
  - (h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and if merchandise, a description of that merchandise and the cost.
- (2) The amount of money corresponding to the scrip, chips, or imitation money collected by the central bank shall be compared to the sale of scrip, chips, or imitation money by the central bank at the conclusion of the special limited charity fundraising event. Any variance shall be documented and cash short or cash over shall be determined.
- (3) For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising events:
- (a) A record of attendance shall be kept for the special limited charitable games; and
  - (b) A copy of the charitable gaming session program, which shall include the:
    - 1. Charitable organization name and license number;
    - 2. Cost to enter, the cost of the **buy-backs**, and the cost of the **add-ons**;
    - 3. Rules of the game;
    - 4. Manner for raising blinds or closing tables; and
    - 5. Prizes. The prizes may be listed as a percentage of the receipts.
- (4) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records shall be maintained.
- (5) If pulltabs are sold, accurate pulltab records shall be

maintained.

(6) If raffles are conducted at a special limited charity fundraising event, accurate raffle records shall be maintained.

(7) The organization shall complete Form CG-Vol and keep it with the charitable gaming session record for that event.

Section 13. Other Allowable Expenses. In addition to those authorized expenses provided for in KRS 238.550, each of the following expenses is determined to be legitimate and shall be allowable charitable gaming expenses of a charitable organization:

(1) The following customary and usual banking fees or charges paid to any financial institution, check reader, or verification company in connection with a charitable organization's charitable gaming account and activities:

- (a) Monthly service charges;
- (b) Check verification service charges;
- (c) Check printing charges;
- (d) Charges relating to returned checks;
- (e) Copying charges for bank records; and
- (f) Credit card processing charges;

(2) Volunteer food, to be consumed on gaming premises, not to exceed fifteen (15) dollars per volunteer, per day;

(3) Any noncash item not to exceed fifty (50) dollars in fair market value given upon achieving a predetermined goal in a raffle;

(4) Clothing provided to volunteers as authorized in these administrative regulations;

(5) Payments made to the Department of Charitable Gaming;

(6) Printing costs incurred in connection with a charitable organization's charitable gaming activities;

(7) Payments for the purchase of prizes to be awarded during the charitable organization's conduct of charitable gaming;

(8) Promotional items;

(9) Federal excise taxes levied under 26 U.S.C. 4401 and 4411, or fees associated with the filing of Internal Revenue Service Form 11-C and paid by a charitable organization during the calendar year; and

(10) Customary and usual fees or charges incurred in the collection of checks dishonored for insufficient funds.

Section 14. Charitable Gaming Expense Categories. (1) The items that may be included as a utilities expense, pursuant to KRS 238.550(9)(c), shall be the money paid for electric, gas, water, sewer, telephone, and trash collection. It may also include any cable or internet expenses that are incurred by the charitable organization for credit card services, card-minding devices, or electronic pulltab systems.

(2) The items that may be included as an advertising expense, pursuant to KRS 238.550, shall be the expenses for a handout, flyer, radio, television, advertising sign, billboard, or other media used to promote an event or activity required to be licensed pursuant to [under] KRS Chapter 238 and any printing costs associated with them.

(3) The items that may be included as a bookkeeping expense, pursuant to KRS 238.550, shall be the costs of completing the financial report, the federal excise tax form, and the federal gaming forms. Bookkeeping expenses shall not include expenses associated with handling charitable gaming funds, preparing charitable gaming session records, or ordering supplies.

(4) The items that may be included as security services, pursuant to KRS 238.550, shall be the expenses associated with paying a person whose sole duty is to promote and provide peace, order, and safety at a charitable gaming event which:

(a) May include patrolling the parking lot or accompanying the charitable organization's personnel to the bank or night depository with the charitable gaming receipts; and

(b) Shall not include costs for security or alarm systems or for special lighting for the building or parking lot.

Section 15. Raffle Recipient Account. (1) A licensed charitable organization receiving distributions from an organization licensed pursuant to KRS 238.535(14)(b) shall maintain a separate bank account that [which] shall be referred to as the "raffle recipient account," in addition to the charitable gaming account and general

account maintained by the licensed charitable organization. The raffle recipient account shall be for the sole purpose of receiving distributions from organizations licensed pursuant to KRS 238.535(14)(b) to hold special event raffles. The funds distributed into the raffle recipient account shall not be commingled with any other account maintained by the licensed charitable organization or any personal account or business account. If the license charitable organization receives distributions from more than one organization licensed pursuant to KRS 238.535(14)(b), the licensed charitable organization shall maintain a separate raffle recipient account for each relationship.

(2) Any distributions received by a licensed charitable organization from an organization licensed pursuant to KRS 238.535(14)(b) shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account from the organization licensed pursuant to KRS 238.535(14)(b). All distributions shall be made within **ten (10) business [five (5)] days of the raffle drawing [date that charitable gaming receipts are deposited into the charitable gaming account of the organization licensed pursuant to KRS 238.535(14)(b)].**

(3) Any expenditures from the raffle recipient account shall be directly to forward the charitable purpose of the licensed charitable organization. No other expenses shall be paid from the raffle recipient account. Distributions into the raffle recipient account shall not be transferred to any other account maintained by the licensed charitable organization or any other person or business.

Section 16. Incorporated by Reference. (1) Form CG-Vol, "Charitable Gaming Volunteer Sign Up Sheet (2018)", is incorporated by reference.

(2) Worksheet WS-06c, "Pulltabs Contributing to a Progressive Raffle Jackpot (2018)", is incorporated by reference.

(3) Worksheet WS-14b, "Progressive Raffle Receipts and Payouts with Pulltab Contributions to Jackpot (2018)", is incorporated by reference.

(4) Worksheet WS-15a, "Progressive Raffle with Pulltab Contribution to Jackpot Deposit Reconciliation (2018)", is incorporated by reference.

(5) Worksheet WS-23a, "Raffle Receipts and Payouts with a Ticket Price of \$5 or Less (2018)", is incorporated by reference.

(6) Worksheet WS-23b, "Raffle Receipts and Payouts with a Ticket Price of More than \$5, but Less than \$50 (2018)", is incorporated by reference.

(7) Worksheet WS-23c, "Raffle Receipts and Payouts with a Ticket Price of \$50 or More, but Less than \$100 (2018)", is incorporated by reference.

(8) Worksheet WS-23d, "Raffle Receipts and Payouts with a Ticket Price of \$100 or More (2018)", is incorporated by reference.

(9) Worksheet WS-23e, "501(c)(7) Raffle Deposit Reconciliation (2018)", is incorporated by reference.

(10) Worksheet WS-23f, "Deposit Accountability (When Charitable Gaming Receipts Are Deposited Before the Raffle Draw (2018)", is incorporated by reference.

(11) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).



VOLUME 45, NUMBER 6 – DECEMBER 1, 2018

**PUBLIC PROTECTION CABINET**  
**Department of Charitable Gaming**  
**(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:060. Prohibited conduct[~~Tipping prohibited~~].**

RELATES TO: KRS 238.510, 238.540[(4)], 238.550[(4)]

STATUTORY AUTHORITY: KRS 238.515[(2), (4), (9)]

NECESSITY, FUNCTION, AND CONFORMITY: The Department[Office] of Charitable Gaming is authorized by KRS 238.515[(2)] to establish and enforce reasonable standards for the conduct of charitable gaming. This administrative regulation prohibits tips or other gratuities for volunteers working at charitable gaming events and prohibits employees of the Department of Charitable Gaming from playing any charitable games, removing any potential conflict of interest or appearance of impropriety[KRS 238.540(4) provides that charitable gaming be conducted and administered only by the charitable organization using volunteer personnel and prohibits persons engaged in the conduct and administration of charitable gaming from receiving compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct].

Section 1. Tipping Prohibited. (1) The charitable organization conducting gaming shall take one (1) or more of the following measures to inform the public that, pursuant to KRS 238.540(4), its volunteers are unable to accept tips or other forms of gratuities[gratuitous conduct]:

(a) Post signs in a conspicuous location that volunteers are not permitted to accept tips;

(b) State prominently on the charitable gaming session[include a notation in a conspicuous location on an occasion] program that volunteers are not permitted to accept tips; or

(c) Announce during[Make an announcement immediately prior to the beginning of] the charitable gaming session[or event] that volunteers are not permitted to accept tips.

(2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those authorized in KRS 238.550(4), award, or otherwise provide any sort of benefits, to, for, or on behalf of any person engaged as a volunteer in the conduct of charitable gaming[sponsored by the charitable organization].

(3) A charitable organization may[shall be permitted to] provide volunteer workers the following:

(a) Food or drink of incidental value not to exceed fifteen (15)[ten (10)] dollars per day to be consumed on the premises where charitable gaming occurs;

(b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs that[which] identifies the volunteer worker as a volunteer[for the charitable organization]; and[or]

(c) Any noncash item not to exceed twenty-five (25) dollars in fair market value given to volunteers upon achievement of predetermined goals in the conduct of a raffle.

(4) All allowable expenditures made by charitable organizations for volunteers[as allowed under subsection (3) of this section] shall be reported on the charitable organization's financial reports[quarterly report required by 820 KAR 1:025].

Section 2. Rebuttable Presumption of Compensation. (1) There is[It shall create] a rebuttable presumption of compensation if a person volunteers at more than four (4) charitable gaming sessions[occasions] a week excluding charity fundraising events as defined[outlined] in 820 KAR 1:055.

(2) There is[It shall create] a rebuttable presumption of compensation if a person volunteers at more than four (4) special limited charitable fundraising events per year.

Section 3. Department Employees Prohibited From Playing Charitable Games. (1) No Department of Charitable Gaming employee, during his[or her] term of employment, shall play any charitable game authorized in KRS Chapter 238 unless the employee's participation in the game is authorized in advance by

the Commissioner as a necessary function of the employee's job duties.

Section 4. Officers, Agents, or Employees of Manufacturers and Distributors. (1) No distributor, distributor's agent, or distributor's employee may play or participate in any charitable gaming in the Commonwealth of Kentucky involving products sold or leased by the distributor while such person is employed by a licensed distributor.

(2) No manufacturer, manufacturer's agent, or manufacturer's employee may play or participate in any charitable gaming in the Commonwealth of Kentucky involving products made, sold, or leased by the manufacturer while such person is employed by a licensed manufacturer.

(3) Servicing of electronic gaming devices shall not be considered conduct or participation in charitable gaming.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: August 13, 2018

FILED WITH LRC: August 14, 2018 at 11 a.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Charitable Gaming**  
**(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:130. Administrative actions.**

RELATES TO: KRS 238.510, 238.515[(6)], 238.530, 238.555, 238.560[(3)], 238.995

STATUTORY AUTHORITY: KRS 238.515[(6), (9)], 238.560[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515[(6)] and 238.560[(3)] authorize the Department of Charitable Gaming to take appropriate disciplinary action against licensed charitable organizations, charitable gaming facilities, manufacturers, distributors, or persons who do not operate in compliance with KRS Chapter 238 and the administrative regulations promulgated thereunder. KRS 238.560[(3)] authorizes[directs] the department[to promulgate an administrative regulation] to classify[administrative] offenses and[describe the] recommended[penalties and other] administrative actions[for those offenses]. This administrative regulation establishes the required classifications and penalties.

Section 1. Department Enforcement Powers. (1) The department may issue a letter of warning, letter of reprimand, or a cease and desist order to any license holder for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may[shall] impose[this] administrative action pursuant to[~~in accordance with~~] KRS 238.560[(3)] if the department determines that the action will deter future violations and promote efforts to correct the violation cited.

Section 2. Fines. (1) The department may assess fines against any license holder in accordance with the following schedule: [- All fines shall be assessed in accordance with KRS 238.560(3).]

(2)[(4)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to charitable gaming recordkeeping and reporting requirements, except for failure to file quarterly reports[as required in 820 KAR 1:025], may[shall] be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year

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may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(3)[(2)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to the conduct of charitable games,~~[including conducting unauthorized games, participation by unauthorized persons, violations of rules of play for bingo, charity game tickets, raffles, games of chance approved for charity fundraising events, and special limited charitable games,]~~ may[shall] be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(4)[(3)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to manufacture, packaging, and distribution of charitable gaming supplies and equipment may[shall] be subject to a fine not to exceed \$500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(5)[(4)] A violation of the provisions of KRS 238.530(10) or 238.555(3) relative to conflicts of interest among types of licensees may[shall] be subject to a fine not to exceed \$750 for each offense. A second or subsequent violation during the same year may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(6)[(5)] A violation for conducting~~[without a license]~~ any activity without a license for which a license is required pursuant to[under] KRS Chapter 238 and 820 KAR Chapter 1 may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(7)[(6)] A violation for making false statements in ~~any[reports or other]~~ documents submitted to the department~~[including quarterly reports, license applications or records of charitable gaming sessions and events,]~~ may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(8)[(7)] A violation of KRS Chapter 238 or 820 KAR Chapter 1 relative to diversion of net receipts from authorized expenses or charitable purposes, unlawful compensation to an individual involved in the conduct of charitable gaming, or any other inurement of net receipts to the private benefit or financial gain of an individual or person, may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(9)[(8)] A violation of KRS 238.510(5) relative to gambling offenses committed on licensed charitable gaming premises or in conjunction with charitable gaming may[shall] be subject to a fine not to exceed \$1,000 for each offense.

(10)[(9)] Any other violation of KRS Chapter 238 or 820 KAR Chapter 1 for which a fine is not established in this section may[shall] be subject to a fine not to exceed \$1,000 for each offense.

Section 3. Probation. (1) The department may impose upon any license holder a term of probation for any violation of KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department may impose this administrative action, pursuant to[in accordance with] KRS 238.560(3), if it determines that department oversight and monitoring of the license holder's activities will promote efforts to correct the cited violation and deter future violations.

Section 4. Revocation, Suspension, or Denial of License.~~[The department may revoke, suspend or deny a license or application for license for any violation of KRS Chapter 238 or 820 KAR Chapter 1 under the following circumstances:]~~ (1) The department shall revoke, suspend, or deny a license or application for a license if:

(a) An applicant, ~~[or]~~ license holder, license holder seeking renewal, or individual associated with the applicant or license holder in a capacity established[listed] in KRS 238.525(3) fails to meet the requirements of KRS 238.525(4) or 820 KAR Chapter 1~~[has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995, or and two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B during the term of licensure];~~

(b) A license holder fails to file any reports required pursuant to KRS Chapter 238 or 820 KAR Chapter 1; or

(c) A license holder, upon notice of delinquency, fails to remit to the department ~~any[of the]~~ charitable gaming fee required pursuant to KRS 238.570(1); and

(d) ~~With respect to license renewal applications, a license holder fails to fulfill any requirement, qualification or eligibility restriction for licensure set forth in KRS Chapter 238 or 820 KAR Chapter 1.~~

(2) The department may revoke, suspend, or deny the license or application of a licensed charitable organization,~~[a]~~ manufacturer,~~[a]~~ distributor, or charitable gaming[a] facility for violations of KRS Chapter 238 or 820 KAR Chapter 1 if the nature, frequency, and severity of the offenses charged~~;~~ or[and] the license holder's or applicant's history of previous violations~~;~~ demonstrate an unwillingness or inability to operate in compliance with the law.

Section 5. Written Notice of Violation. The department shall issue a written notice of violation to a license holder determined to have violated any provisions of KRS Chapter 238 or 820 KAR Chapter 1. This notice shall be provided on a Form CG-NOV, Notice of Violation(s). Any Notices of Violation issued to a license holder shall be considered by the department in evaluating the license holder's history of previous violation. A Notice of Violation shall state the provisions alleged to have been violated and shall notify the license holder that the department may take administrative action against the license holder as a result of the violations.

Section 6. Investigations. A person may[shall] submit a request, in writing, to the department to initiate an investigation of an alleged violation.

Section 7. Incorporation by Reference. (1) Form CG-NOV, "Notice of Violation(s) (2018)",~~[07/04,]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, ~~[or copied,]~~ subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**PUBLIC PROTECTION CABINET  
Department of Charitable Gaming  
(As Amended at ARRS, November 13, 2018)**

**820 KAR 1:135. Disposal of gaming supplies.**

RELATES TO: KRS 238.515

STATUTORY AUTHORITY: KRS 238.515

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. This administrative regulation establishes standards for the disposal of charitable gaming supplies and equipment.

Section 1. Cessation of Gaming. When a charitable organization

ceases to game, the charitable organization shall:

- (1) Perform a final inventory of all charitable gaming supplies and equipment;
- (2) Spend or disburse remaining charitable gaming funds:
  - (a) In a manner that is consistent with the charitable organization's charitable purpose;~~;~~<sup>or</sup>
  - (b) Donate the charitable gaming funds to another charitable organization's charitable purpose; and
- (3) Dispose of all unused charitable gaming supplies and equipment by:
  - (a) Returning to a distributor;
  - (b) Donating to another charitable organization with the permission of the department;
  - (c) Donating to the department for demonstration and training purposes; or
  - (d) Destruction pursuant to Section 2 of this administrative regulation.

Section 2. Method of Destruction. When a charitable organization must destroy gaming supplies, the gaming supplies shall be destroyed by:

- (1) Burning in compliance with state and federal law;
- (2) Shredding;
- (3) Defacing the gaming supplies in some manner that prevents its reuse; or
- (4) Any combination of the above-referenced methods.

Section 3. Abandoned Charitable Gaming Supplies and Equipment. Abandoned charitable gaming supplies and equipment shall be seized by the department and destroyed or kept for demonstration and training purposes.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

CANNON G. ARMSTRONG, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 14, 2018

FILED WITH LRC: May 14, 2018 at 4 p.m.

CONTACT PERSON: Doug Hardin, Deputy Commissioner, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625, email [Doug.Hardin@ky.gov](mailto:Doug.Hardin@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 13, 2018)**

**895 KAR 1:001. Definitions for 895 KAR Chapter 1.**

RELATES TO: KRS 205.520, 205.8451, 29 U.S.C. 701, 42 U.S.C. 1315, 1395dd, 1396a, 1396d, 9902, 12101, 18001, 20 C.F.R. Part 418, 42 C.F.R. Parts 435, 438, 440  
 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes definitions for 895 KAR Chapter 1.

Section 1. Definitions. (1) "ACA" means the Patient Protection and Affordable Care Act, 42 U.S.C. 18001 *et seq.*

(2) "ACA expansion adult" means a Kentucky HEALTH beneficiary who meets the requirements established by 42 C.F.R. 435.119.

(3) "Active months" means the number of months in which a Kentucky HEALTH beneficiary is not disenrolled or in a suspension status during a benefit period.

(4) "Alternative benefit plan" or "ABP" means the benefit package developed by the department and approved by the Centers for Medicare and Medicaid Services in accordance with 42 C.F.R. Part 440, Subpart C (440.300-440.395) and provided to ACA expansion adults.

(5) "Applicant" means an individual for which coverage under Kentucky HEALTH is requested.

(6) "Beneficiary" means an individual who is enrolled in one of the following eligibility groups and subject to Kentucky HEALTH provisions under ~~KAR~~ Title 895~~[KAR]~~:

- (a) ACA expansion adult;
  - (b) Parent and caretaker relative;
  - (c) Transitional medical assistance;
  - (d) Pregnant women; or
  - (e) Former foster youth.
- (7) "Benefit year" means the time period:
- (a) January 1 through December 31 of each calendar year; or
  - (b) From the date of enrollment in Kentucky HEALTH through December 31 of that same calendar year.

(8) **(a) "Chronically homeless" means that an individual has been:**

**1. Continuously homeless for the previous ninety (90) days; or**

**2. Homeless on at least four (4) occasions in the previous three (3) years where those occasions cumulatively total at least ninety (90) days.**

**(b) For the purposes of this subsection, "homeless" means that a person is sleeping overnight in a:**

**1. Place not meant for human habitation, including sleeping overnight outside or in a shelter or improvised shelter not intended for long-term human habitation such as a tent or functioning or nonfunctioning automobile not designed for long-term human habitation; or**

**2. Facility that is established or used with a primary purpose of providing shelter for persons who would otherwise sleep in a place not meant for human habitation.**

(9) "Community engagement activities" means department approved activities to support community engagement and employment of Kentucky HEALTH beneficiaries, including:

- (a) Employment;
- (b) Education;
- (c) Job skills training;
- (d) Community service; or
- (e) Substance use disorder treatment.

~~(10)~~<sup>(9)</sup> "Conditionally eligible beneficiary" means an ACA expansion adult or a parent and caretaker relative who:

- (a) Has been determined to meet all Kentucky HEALTH eligibility criteria;
- (b) Has not made an initial premium payment; and
- (c) Is not currently eligible to receive Kentucky HEALTH benefits.

~~(11)~~<sup>(10)</sup> "Copay plan" means the cost sharing plan whereby beneficiaries:

- (a) Are charged a copayment according to the schedule of copays established in 907 KAR 1:604 and the Kentucky Medicaid state plan for every Kentucky HEALTH covered benefit received; and
- (b) Do not have access to a MyRewards account.

~~(12)~~<sup>(11)</sup> "Debt" means any unpaid premium amounts that MCOs may collect from a beneficiary, and which is neither a condition of eligibility nor required to cure a non-payment penalty.

~~(13)~~<sup>(12)</sup> "Declared disaster" means a flood, storm, earthquake, catastrophic event, declared emergency by the governor, or any other event or series of events designated by the governor as a disaster or natural disaster.

**(14)[(43)]** "Deductible account" means a state-funded account that:

(a) Functions as an administrative tracking mechanism designed to expose beneficiaries to healthcare costs; ~~and~~

(b) Tracks the first \$1,000 of non-preventive care services received within a benefit year by a beneficiary; and

(c) Includes a monthly statement sent to the beneficiary.

**(15)[(14)]** "Dental services" means services:

(a)1. That are purchased by a beneficiary from an enrolled Medicaid provider via a MyRewards account; and

2. Include cleanings, fillings, and root canal therapy; and

(b) That do not include medical dental services such as including but not limited to the removal of benign and malignant lesions, removal of foreign bodies, wound suturing, or anesthesia related to medical dental services, which shall continue to be reimbursed pursuant to KAR Title 907 ~~[KAR]~~.

**(16)[(15)]** "Department" means the Department for Medicaid Services or its designee.

**(17) "Disenrolled" means:**

**(a) The removal of a beneficiary's name and information from any lists of currently eligible beneficiaries;**

**(b) The department or managed care organization will not pay for a beneficiary or previous beneficiary's Medicaid claims while the individual is disenrolled; and**

**(c) A beneficiary will/shall not receive Medicaid benefits until the beneficiary has reapplied to the Medicaid program in order to establish eligibility for Medicaid benefits.**

**(18) "Domestic violence and abuse" means behavior experienced by a victim or survivor that includes physical abuse, emotional or psychological abuse, sexual abuse, or financial abuse, which shall include using money or other financial tools to exert control[(16) "Domestic violence" has the same meaning as in KRS 403.720].**

**(19)[(17)]** "Early and Periodic Screening, Diagnostic, and Treatment Services" or "EPSDT" means those services defined in 42 U.S.C. 1396d(r).

**(20)[(18)]** "Emergency medical condition" means a medical condition as established by 42 U.S.C. 1395dd.

**(21)[(19)]** "Emergency services" means covered services that are needed to evaluate or stabilize an emergency medical condition.

**(22)[(20)]** "Fast-track payment" means an advance premium dollar amount calculated by the department that an applicant may opt to pay to expedite coverage to the first day of the month in which the payment is made, which may be as early as the first day of the month of application.

**(23)[(21)]** "Federal poverty level" or "FPL" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

**(24)[(22)]** "Former foster youth" means a beneficiary who:

(a) Is at least nineteen (19) years of age, but no more than twenty-six (26) years of age; and

(b) Was in foster care under the responsibility of the state or a Tribe within Kentucky or another state; and

(c) Was enrolled in Medicaid on the date of attaining age eighteen (18) or a higher age as elected by the state.

**(25)[(23)]** "Full-time employment" means employment that is at least 120 hours per calendar month.

**(26)[(24)]** "Healthy behavior activity" means an activity that is:

(a) Documented by a beneficiary;

(b) Reported as designated by the department;

(c) Approved by the department; and

(d) When completed allows for a beneficiary to accrue a balance in the beneficiary's MyRewards account.

**(27)[(25)]** "Household" means the composition and family size of a household as established by 42 C.F.R. 435.603(f).

**(28)[(26)]** "Household income" means the application of the MAGI of every individual included in the individual's household as established by/set forth at 42 C.F.R. 435.603.

**(29)[(27)]** "Institutionalized" means:

(a) Meeting preadmission screening and resident review (PASRR) criteria established pursuant to 907 KAR 1:022 and

907 KAR 1:755 to reside[Residing] in:

1. A nursing facility;

2. An intermediate care facility for an individual with an intellectual disability; or

3. A medical institution;

(b) Receiving hospice services; or

(c) Receiving 1915(c) home and community based services.

**(30)[(28)]** "KCHIP" means the Commonwealth's Children's Health Insurance Program.

**(31)[(29)]** "Kentucky HEALTH" means the commonwealth's Section 1115 waiver demonstration program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services as authorized by 42 U.S.C. 1315.

**(32)[(30)]** "Life-changing event" means the marriage of a beneficiary living in the household, a birth, a death of a member of the household, the end of a marriage of a beneficiary in the household through divorce or annulment, or other type of major life-changing event as defined by 20 C.F.R. ~~418.1205~~ **418.1205(1205)**.

**(33)[(31)]** "Managed care organization" or "MCO" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

**(34)[(32)]** "Medically frail" means a determination has been made that an ACA expansion adult, parent and caretaker relative or TMA beneficiary, in accordance with both 42 C.F.R. 440.315(f) and department developed criteria, has a:

(a) Disabling mental disorder;

(b) Serious mental illness;

(c) Chronic substance use disorder;

(d) Chronic homelessness;

(e) Serious and complex medical condition; or

(f) Physical, intellectual, or developmental disability that significantly impairs the beneficiary's ability to perform one (1) or more activities of daily living as defined by KRS 194A.700 ~~(1)~~.

**(35)[(33)]** "Medically necessary" means a covered service that is determined to be needed in accordance with 907 KAR 3:130.

**(36)[(34)]** "Modified Adjusted Gross Income" or "MAGI" means MAGI-based income as calculated in accordance with 42 C.F.R. 435.603(e).

**(37)[(35)]** "MyRewards account" or "MRA" means the account available to beneficiaries that can be utilized to purchase department approved services not covered by a beneficiary's benefit package and otherwise permitted in the special terms and conditions to be covered by the account.

**(38)[(36)]** "Nonemergency medical transportation" or "NEMT" means transportation services provided pursuant to 907 KAR 3:066 that are unrelated to an emergency medical condition.

**(39)[(37)]** "Non-payment penalty" means the six (6) month non-eligibility penalty period applied to beneficiaries to whom cost sharing requirements apply but who fail to make timely premium payments.

**(40)[(38)]** "Parent and caretaker relative" means a beneficiary who meets the requirements established by 42 C.F.R. 435.110.

**(41)[(39)]** "Past due premiums" means the total amount that:

(a) A beneficiary is required to pay to either avoid a non-payment penalty or to end a non-payment penalty prior to the expiration of the six (6) month penalty period; and

(b) Does not include debt.

**(42)[(40)]** "PATH" means the community engagement component of Kentucky HEALTH and stands for "Partnering to Advance Training and Health".

**(43)[(41)]** "PATH requirement" means the requirement that a beneficiary complete eighty (80) hours of community engagement activities each month to maintain eligibility in the Kentucky HEALTH program, unless the beneficiary meets an exception[exceptions] established in 895 KAR 1:020.

**(44)[(42)]** "Pregnant women" means beneficiaries who meet the requirements established by 42 C.F.R. 435.116.

**(45)[(43)]** "Premium assistance" means the Kentucky HEALTH benefit plan that:

(a) Subsidizes an individual's employer sponsored insurance plan minus their Kentucky HEALTH premium amount; and

(b) A beneficiary is required to participate in if the beneficiary is

1. Enrolled in Kentucky HEALTH for more than twelve (12)



months;

2. Has been continuously employed by their employer for twelve (12) months, and

3. Has access to employer sponsored insurance.

**(46) [(44)]** "Premium plan" means the cost sharing plan whereby beneficiaries make required monthly premium payments.

**(47) [(45)]** "Protected disability" means a legally defined disability protected pursuant to 42 U.S.C. 12101, 29 U.S.C. 701 et seq., or 42 U.S.C. 18116.

**(48) [(46)]** "Provider" is defined by KRS 205.8451(7).

**(49) [(47)]** "Random control group" means beneficiaries who are otherwise eligible for Kentucky HEALTH but are allocated, at random, to a control group through which they do not have the requirements of Kentucky HEALTH applied.

**(50) [(48)]** "Re-entry course" means an education class designated by the department to enable a beneficiary in a suspension status or penalty period to meet the education requirement for early re-entry into Kentucky HEALTH or early reactivation of a MyRewards account.

**(51) [(49)]** "Special terms and conditions" or "STCs" means the agreement between the Centers for Medicare and Medicaid Services and the commonwealth regarding the rules and requirements that govern the operation of Kentucky HEALTH.

**(52) [(50)]** "State" or "Commonwealth" means the Commonwealth of Kentucky.

**(53) "Suspended" means:**

**(a) A beneficiary is designated within the department's computer systems as being temporarily ineligible for Medicaid benefits; and**

**(b) The department or managed care organization will not pay for the beneficiary's Medicaid claims while the individual is temporarily ineligible due to a suspension.**

**(54) "Temporarily vulnerable" means that an individual is:**

**(a) A refugee, as defined by KRS 186.010(13)(c), during the first twelve (12) months after the refugee entered the United States; or**

**(b) A victim of domestic violence and abuse.**

**(55) [(51)]** "Transitional medical assistance" or "TMA" means a beneficiary who meets the requirements established by 42 U.S.C. 1396r.

**(56) [(52)]** "Vision services":

(a)1. Means services purchased by a beneficiary via a MyRewards account from an enrolled Medicaid provider; and

2. Includes routine or preventative eye exams; and

(b) Does not include medical vision services including the removal of benign and malignant lesions or tumors, removal of foreign bodies, wound suturing, and anesthesia related to medical vision services.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, November 13, 2018)

### 895 KAR 1:010. Eligibility for Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315, 1396a, 42 C.F.R. 435.916, 438.56, 457.343

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with

Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the eligibility requirements for Kentucky HEALTH.

#### Section 1. Eligibility Groups.

(1) Except for a beneficiary assigned to the random control group pursuant to 895 KAR 1:045, Section 2, a beneficiary that meets the eligibility standards established in this section and who is therefore eligible for participation in the Kentucky HEALTH program shall only receive services from the Medicaid program as established in Title 895 KAR.

(2) An individual shall be eligible for participation in Kentucky HEALTH if the individual:

(a) Is a resident of Kentucky;

(b) Is not enrolled in, or, for an ACA expansion adult, eligible for, enrollment in the federal Medicare program;

(c) Is not enrolled in a 1915(c) waiver, institutionalized, or receiving hospice services; and

(d) Is eligible under any of the following Medicaid assistance categories:

1. Parent and caretaker relative;
2. Transitional medical assistance;
3. Former foster youth;
4. Pregnant women; or
5. ACA expansion adult.

**(3)(a) An individual eligible for Kentucky HEALTH and who has access to an employer sponsored health insurance plan shall comply with any requirements established pursuant to 907 KAR 5:005 related to mandatory enrollment within the Kentucky integrated health insurance premium payment program.**

**(b) An individual who is eligible for Kentucky HEALTH, but does not meet mandatory enrollment requirements established pursuant to 907 KAR 5:005, may elect to enroll in the Kentucky integrated health insurance premium payment program established pursuant to 907 KAR 5:005 if the department determines the employer sponsored health insurance plan to be cost-effective pursuant to 907 KAR 5:005.**

#### Section 2. Presumptive Eligibility Period.

(1) During the presumptive eligibility period as established in 907 KAR 20:050, a beneficiary who is eligible under the ACA expansion adult group shall receive benefits:

(a) As established in the Kentucky HEALTH alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

(b) In accordance with 895 KAR 1:035.

(2) A Kentucky HEALTH beneficiary in a suspension period or a non-eligibility period shall not be eligible for presumptive eligibility as established in 907 KAR 20:050.

#### Section 3. Transition to Kentucky HEALTH.

(1) An individual shall be enrolled in Kentucky HEALTH on the first day of the month of the Kentucky HEALTH eligibility determination if the individual:

(a) Is determined to be presumptively eligible pursuant to 907 KAR 20:050; and

(b) Subsequently applies for Kentucky HEALTH and is determined eligible for Kentucky HEALTH.

(2) A Kentucky HEALTH beneficiary transitioning to Kentucky HEALTH from a presumptive eligibility period who is required to pay premiums in accordance with 895 KAR 1:015 shall:

(a) Be enrolled in the copay plan; and

(b) Have sixty (60) days from the date of the invoice from the MCO to make a payment and avoid a non-payment penalty.

Section 4. Requirements Relating to Annual Recertification.

(1)(a) The annual eligibility recertification process operated by the department shall be:

1. Consistent with 42 C.F.R. 435.916 for the renewal of Medicaid eligibility; and
2. If applicable, consistent with 42 C.F.R. 457.343 for the renewal of CHIP eligibility.

(b) For a beneficiary receiving premium assistance and who is covered by a parent or caretaker's employer-sponsored insurance, including children enrolled in either Medicaid or CHIP, the annual recertification shall be aligned with the parent or caretaker's employer sponsored insurance open enrollment period.

(2) A beneficiary shall comply with all requirements of the recertification process, including the requirement of providing the State with all necessary information or documentation to complete the process.

(3) Following a recertification process in which all requirements were not met, a beneficiary shall be:

(a) Disenrolled from Kentucky HEALTH; and

(b) Granted an additional ninety (90) day reconsideration period in which to submit recertification paperwork to be reenrolled in Kentucky HEALTH. Reenrollment shall be effective the first day of the month in which the recertification requirements were completed, unless the individual was subject to a suspension during the recertification process.

(4)(a) Except as provided by paragraph (b) of this subsection, an individual who has failed to submit all required recertification information and documentation upon the expiration of the ninety (90) day reconsideration period established in subsection (3) of this section shall be subject to a non-eligibility period of six (6) months.

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;
2. Former foster youth; or
3. Determined to be medically frail~~[;]~~ or temporarily vulnerable

in accordance with 895 KAR 1:055.

(5) An individual subject to the non-eligibility period shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements established in 895 KAR 1:020.

(6)(a) A beneficiary who is subject to the non-eligibility penalty period under this section may request a good cause exemption by providing verification of any of the following:

1. The individual was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to provide information necessary to complete the recertification during the recertification reporting period;

2. The individual has a protected disability, and the individual requested but was not provided reasonable modifications needed to complete the recertification process;

3. The individual has a protected disability and there were no reasonable modifications that would have enabled the individual to complete the recertification process;

4. A member of the individual's immediate family who was living in the home with the individual who failed to report the change in circumstances during the reporting period as required by Section 4 of this administrative regulation:

- a. Was institutionalized; or
- b. Died;

5. A member of the individual's immediate family who was living in the home with the individual who failed to complete the recertification process has a protected disability, and caretaking or other disability-related responsibilities resulted in the individual's inability to complete recertification;

6. The individual either obtained or lost private insurance coverage during the recertification reporting period;

7. The individual was evicted from a home or experienced homelessness during the recertification reporting period;

8. The individual was a victim of domestic violence and abuse during the recertification reporting period; or

9. The individual was the victim of a declared disaster that occurred during the recertification reporting period.

(b) If a good cause exemption is granted, the beneficiary:

1. May re-enroll prior to the expiration of the non-eligibility penalty period; and

2. Shall not be required to complete the early re-entry requirements established by 895 KAR 1:020.

Section 5. Requirements for a Beneficiary to Report a Change in Circumstance.

(1) A beneficiary shall report any change in circumstance that would affect eligibility under any MAGI or non-MAGI requirements within thirty (30) days of the change in circumstance.

(2) A beneficiary with a change in circumstance affecting eligibility shall be disenrolled:

(a) If the department determines the individual ineligible for all other bases of Medicaid eligibility; and

(b) After the department reviews the individual for eligibility for other insurance affordability programs in accordance with 42 C.F.R. 435.916(f).

(3)(a) Except as provided by paragraph (b) of this subsection, a beneficiary who failed to report a change within the time frames required by subsection (1) of this section and that failure resulted in the beneficiary receiving a benefit for which the beneficiary was not eligible shall be disenrolled and subject to a non-eligibility period of six (6) months~~[;]~~

(b) A beneficiary shall be exempt from paragraph (a) of this subsection if the beneficiary is:

1. A pregnant woman;
2. A former foster youth; or
3. Determined to be medically frail or temporarily vulnerable.

(4) A beneficiary who is subject to a non-eligibility period under this section shall have the opportunity to re-enter Kentucky HEALTH prior to the expiration of the six (6) month penalty period by completing the early re-entry requirements set forth at 895 KAR 1:020.

(5)~~[(a)]~~ A beneficiary who is subject to disenrollment and a non-eligibility penalty period under this section may request a good cause exemption by providing verification of any good cause exemption established in Section 4(6) of this administrative regulation.

Section 6. Kentucky HEALTH Initial Eligibility Appeals – Premium Payment Required.

(1) If an applicant was determined ineligible for Kentucky HEALTH but subsequently receives a favorable decision on appeal under this chapter, and is a beneficiary of any group established~~[set forth]~~ in 895 KAR 1:015 for which premium payments are required as a condition of eligibility, upon resolution of the appeal, the beneficiary shall be:

(a) Enrolled in Kentucky HEALTH; and

(b) Required to make a premium payment within sixty (60) days of the date of initial invoice from the MCO.

(2) In accordance with subsection (1)(b) of this section, an individual who does not make the required premium payment within sixty (60) days of the date of invoice shall be subject to the non-payment penalty provisions established in 895 KAR 1:015.

Section 7. Continued Payment to Retain Benefits Pending Appeal.

(1) If a beneficiary is required to make premium payments, the beneficiary shall continue to make any monthly premium payments that become due during an appeal within sixty (60) days of the MCO's date of invoice in order to continue Kentucky HEALTH benefits.

(2) A beneficiary's premium payments submitted during the appeal process shall be subject to the following requirements:

(a) If the issue being appealed is recalculation of the beneficiary's required premium amount, the recalculated premium amount shall remain in effect as established in 895 KAR 1:015 while the appeal is pending; and

(b) If the recalculated premium determination is overturned on appeal, excess premium amounts paid, if any, shall be credited to the beneficiary's premium payment in the next administratively feasible month.

(3) A beneficiary shall receive continued benefits pending the



outcome of an administrative hearing if the beneficiary requests in writing that plan benefits be maintained pending the administrative appeal and the action is not a result of the beneficiary's nonpayment of required premiums.

Section 8. Changing MCOs.

(1) Except as provided in subsections (2) or (3) of this section, a beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year.

(2) A beneficiary may change MCO upon request and without cause, only in the following circumstances:

(a) If the change is requested prior to the earlier of:

1. The date the beneficiary makes an initial fast-track payment or premium payment; or

2. The date the beneficiary has enrolled in Kentucky HEALTH after the sixty (60) day initial payment period has expired;

(b) The beneficiary is a pregnant woman or a former foster youth, in which case the beneficiary shall be allowed to change MCOs without cause for ninety (90) days after enrollment in Kentucky HEALTH; or

(c) During the beneficiary's annual open enrollment opportunity for the following benefit year.

(3) A beneficiary shall remain enrolled with the same MCO during the beneficiary's benefit year and may change MCOs upon request, for cause, as established in 907 KAR 17:010 and as provided for at 42 C.F.R. 438.56(c)(1).

Section 9. MCO Requirements when a Beneficiary Changes MCO.

(1) Each MCO shall ensure that a beneficiary transferring from another MCO does not experience an interruption in care.

(2) For a beneficiary transitioning to a new MCO, the MCO from which the beneficiary is transferring shall refund any balance of the beneficiary's premium within thirty (30) days of the last date of the beneficiary's participation with the MCO.

(3) The MCO from which the beneficiary is transferring shall provide the beneficiary's deductible account balance to the new MCO.

Section 10. Cost Share Requirements and Limitations.

(1) An MCO shall not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, for any covered service to a beneficiary who is pregnant.

(2) An MCO shall not charge, collect, or impose, and shall require that any network providers do not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance, to a beneficiary for covered services, except for the following:

(a) Copayments as established[set forth] in the Kentucky Medicaid state plan for a beneficiary enrolled in the copay plan; and

(b) Premiums as established in 895 KAR 1:015.

(3) An MCO may attempt to collect any debt but shall not:

(a) Report the premium amount owed to a credit reporting agency;

(b) Place a lien on the beneficiary's or disenrolled individual's home;

(c) Refer the case to a debt collector;

(d) File a lawsuit; or

(e) Seek a court order to seize a portion of the beneficiary or disenrolled individual's earnings.

Section ~~11~~**[14]**. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon  
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**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(As Amended at ARRS, November 13, 2018)**

**895 KAR 1:015. Premium payments within the Kentucky HEALTH program.**

RELATES TO: KRS 205.520, 42 U.S.C. 1315, 42 C.F.R. 447.56(f)

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program.

Section 1. Required Premium Payments.

(1) Notwithstanding any provision of Title 907 KAR to the contrary, including 907 KAR 1:604, any premium payments or copay plan requirements established pursuant to this administrative regulation are mandatory for beneficiaries and shall be remitted as established pursuant to Section 3 of this administrative regulation.

(2) A beneficiary that makes monthly premium payments shall:

(a) Not incur any other cost sharing for their healthcare coverage; and

(b) Have access to a MyRewards account.

~~(3)~~**(2)**(a) Except as provided in Section 2 of this administrative regulation, a beneficiary with income above 100 percent FPL shall make required monthly premium payments to retain eligibility for Kentucky HEALTH.

(b) A beneficiary with income that is less than 100 percent FPL shall be exempt from the requirement to make a premium payment as a condition of Kentucky HEALTH eligibility.

~~(4)~~**(3)**(a) Except as provided by paragraph (b) of this subsection, a beneficiary, regardless of FPL, shall make premium payments as a condition to access the beneficiary's MyRewards account.

(b) A beneficiary that is eligible for Kentucky HEALTH on the basis of being a pregnant woman shall be exempt from the requirement to make premium payments as a condition of accessing the beneficiary's MyRewards account.

Section 2. Premium Amount, Calculations, and Changes.

(1)(a) Each household's monthly premium amount shall be an amount determined by the department pursuant to the criteria established in subsection (2) of this section and made available pursuant to a formula and a chart posted prominently on the department's Web site.

(b) If the adults within a household are members of different MCOs, a separate premium shall be charged to each adult member.

(2) A beneficiary's monthly premium shall not exceed four (4) percent of the aggregate household income, except that a

beneficiary subject to the premium payment requirement shall be required to contribute a one (1) dollar monthly premium, at minimum, to access the beneficiary's MyRewards account.

(3)(a) In accordance with 42 C.F.R. 447.56(f), a household's combined premium and cost sharing requirements shall not exceed five (5) percent of the aggregate household income within a calendar quarter.

(b) Each beneficiary who is a member of a household that reaches the five (5) percent maximum cost sharing in a calendar quarter shall have his or her[their] monthly premium reduced to one (1) dollar for the remainder of the calendar quarter to avoid non-payment penalties as established in Section 4 of this administrative regulation.

(4) After twenty-four (24) months of enrollment in Kentucky HEALTH, the monthly premium amount paid by a beneficiary whose income is above 100 percent of the FPL shall increase.

(5) The department shall notify each beneficiary of that beneficiary's premium payment requirements upon determination of eligibility for Kentucky HEALTH.

(6) As directed by the department, an MCO shall aggregate, accurately track, and forward all premium payments remitted by or on behalf of its members who are:

- (a) Beneficiaries with a cost-sharing requirement; and
- (b) Who are eligible on the basis of the MAGI.

(7) The department:

- (a) Shall evaluate premium rates and amounts annually; and

(b) May change published rates on an annual basis in accordance with KRS Chapter 13A.

(8) The department, or an MCO on behalf of the department, shall notify each beneficiary of any Kentucky HEALTH premium changes at least sixty (60) days prior to the effective date of the change.

(9) The department shall determine necessary adjustments to a beneficiary's premium amount in the following circumstances:

- (a) At the beneficiary's annual recertification; or

(b) If made aware that the beneficiary's household income, household composition, or other eligibility factor has changed during the eligibility period.

(10) If an adjustment is necessary pursuant to subsection (9) of this section, the new premium payment amount shall be effective the first day of the next administratively feasible month following the calculation of the new premium amount.

### Section 3. Entities Allowed to Make Premium Payment.

(1) A monthly premium payment may be made by:

- (a) A beneficiary; or

(b) Any third party on the beneficiary's behalf, except any MCO.

(2)(a) A third-party payment submitted pursuant to this section shall be used for a beneficiary's premium obligations only.

(b) Any payment in excess of the required premium obligation for the remainder of the beneficiary's benefit year shall be refunded to the source of the payment.

(3) A provider or a provider-related entity making a premium payment on a beneficiary's behalf shall have criteria for providing premium payment assistance that does not distinguish between beneficiaries based on whether or not they receive or will receive services from the contributing provider or class of providers.

(4) A provider shall not include the cost of a payment established pursuant to this administrative regulation in the cost of care for purposes of Medicare and Medicaid cost reporting.

(5) A payment made pursuant to this section shall not be included as part of a Medicaid shortfall or uncompensated care.

### Section 4. Non-payment Penalties.

(1) A conditionally eligible beneficiary who fails to make the first premium payment within sixty (60) days from the date of the first invoice shall be subject to the penalties established in this subsection.

(a) A beneficiary with a household income above 100 percent of the FPL shall:

- 1. Not be enrolled in Kentucky HEALTH; and
- 2. Reapply for Kentucky HEALTH coverage, if the beneficiary

elects to attempt to reenroll.

(b) A beneficiary with a household income at or below 100 percent of the FPL shall be:

- 1. Enrolled in Kentucky HEALTH in a copay plan; and

2. Subject to the non-payment penalty provisions established in subsection (2)(b) of this section.

(2) A beneficiary who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice or who voluntarily withdraws from Kentucky HEALTH to avoid making a premium payment or incurring debt as a result of non-payment shall be subject to the penalties established in this subsection.

(a) If the beneficiary's household income is above 100 percent of the FPL, the beneficiary shall:

- 1. Be disenrolled from Kentucky HEALTH;

2. Not be able to reenroll in Kentucky HEALTH for a period of six (6) months, unless the beneficiary completes all requirements for early re-entry as established in 895 KAR 1:020;

3. Receive a one-time balance deduction from the beneficiary's MyRewards account of twenty-five (25) dollars as established in 895 KAR 1:030; and

4. Have a suspension of the beneficiary's MyRewards account until the beneficiary is re-enrolled in Kentucky HEALTH, unless the beneficiary meets the requirements for re-entry or reactivation of MyRewards account as established in 895 KAR 1:030.

(b) A beneficiary with a household income at or below 100 percent of the FPL, in accordance with subsection(1)(b) of this section, shall:

- 1.a. Be enrolled in the copay plan; and

b. Make copays for all covered services equal to the copays established in the Kentucky Medicaid state plan in Title 907 KAR;

2. Receive a one-time balance deduction from the beneficiary's MyRewards account of twenty-five (25) dollars as established in 895 KAR 1:030; and

3. Have a suspension of the beneficiary's MyRewards account, until either of the following occurs:

a. The beneficiary completes the requirements for re-entry or reactivation of a MyRewards account as set forth at 895 KAR 1:030 to reactivate the beneficiary's MyRewards account prior to the expiration of the six (6) month penalty period;; or

b. After the expiration of the six (6) month penalty period, the beneficiary makes one (1) premium payment to reactivate coverage in the premium plan.

(c) A beneficiary in a penalty period ~~may/shall be permitted to~~ end or avoid the non-payment penalty prior to the expiration of the six (6) month penalty period without completing the early re-entry requirements established in 895 KAR 1:020 by providing verification of any of the following:

1. The beneficiary was hospitalized, otherwise incapacitated, or has a protected disability, and, as a result, was unable to make a premium payment during the sixty (60) day payment period;

- 2.a. The beneficiary has a protected disability; and

b. The beneficiary requested but was not provided reasonable modifications needed to make a premium payment;

- 3.a. The beneficiary has a protected disability; and

b. There were no reasonable modifications that would have enabled the beneficiary to make a premium payment;

4. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment:

- a. Was institutionalized during the reporting period; or

- b. Died during the reporting period;

5.a. A member of the beneficiary's immediate family who was living in the home with the beneficiary who failed to make a premium payment has a protected disability; and

b. Caretaking or other responsibilities related to the disability resulted in the beneficiary's inability to make the premium payment;

6. The beneficiary either obtained or lost private insurance coverage during the reporting period;

7. The beneficiary was evicted from a home or experienced homelessness during the sixty (60) day payment period;

- 8. The beneficiary was a victim of domestic violence and

abuse during the sixty (60) day payment period; or

9. The beneficiary was the victim of a declared disaster that occurred during the sixty (60) day payment period.

Section 5. Groups with Premium Payment as Optional.

(1) A beneficiary in the following eligibility groups ~~may~~**shall have the option to** make monthly premium payments to access a MyRewards account as established in 895 KAR 1:030:

(a) A beneficiary who is a former foster youth; or

(b) A beneficiary who is medically frail or temporarily vulnerable.

(2)(a) A beneficiary who, under this section or Section 1 of this administrative regulation, has the option of making premium payments shall not be subject to:

1. Disenrollment for non-payment; or

2. Copayments for services.

(b) A beneficiary who, under this section or Section 1 of this administrative regulation, has the option of making premium payments who fails to make an ongoing premium payment within sixty (60) days from the date of the premium invoice shall have the beneficiary's MyRewards account suspended for six (6) months, with the option to reactivate the MyRewards account prior to the expiration of the six (6) month penalty period by taking a re-entry course.

Section 6. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

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## **CABINET FOR HEALTH AND FAMILY SERVICES**

### **Department for Medicaid Services**

#### **Division of Policy and Operations**

**(As Amended at ARRS, November 13, 2018)**

### **895 KAR 1:020. PATH requirement for the Kentucky HEALTH program.**

RELATES TO: KRS 205.520, 42 U.S.C. 1315

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the Partnering to Advance Training and Health (PATH) requirements for the Kentucky HEALTH program.

Section 1. Beneficiaries Required to Meet the PATH Requirement.

(1) A beneficiary shall complete the monthly PATH requirement

if the beneficiary is:

(a) At least nineteen (19) years of age and less than sixty-five (65) years of age;

(b) Eligible under one (1) of the following Medicaid assistance categories:

1. ACA Expansion Adult;

2. Parent and Caretaker Relative; or

3. Transitional Medical Assistance; and

(c) Not exempt from the PATH requirement pursuant to Section 4 of this administrative regulation.

(2) A beneficiary required to meet the PATH requirement shall not receive the suspension required by Section 3 of this administrative regulation if a good cause exemption is granted. A good cause exemption shall be granted if:

(a) The beneficiary:

1. Has a protected disability; and

2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to that disability;

(b) The beneficiary:

1. Has an immediate family member living in the beneficiary's home with a protected disability; and

2. Was unable to meet the PATH requirement for the month in which the good cause exemption is sought for reasons related to the disability of that family member;

(c) During the month in which the good cause exemption is sought, the beneficiary or an immediate family member who was living in the home with the beneficiary experienced:

1. An inpatient hospitalization or a serious medical event involving treatment at a hospital; or

2. A serious illness;

(d) The beneficiary experienced the birth or death of a family member living with the beneficiary during the month in which the good cause exemption is sought;

(e) The beneficiary experienced severe inclement weather, such as a snowstorm, an ice storm, a warned winter storm, or other warned weather event, which includes a declared disaster, during the month in which the good cause exemption is sought; or

(f) During the month in which the good cause exemption is sought, the beneficiary experienced:

1. A family emergency; or

2. A life-changing event.

Section 2. PATH Requirement Timeframe, Qualifying Activities, and Deemed Compliance.

(1)(a) A beneficiary shall be given a three (3) month notice period before being subject to the PATH requirement if the beneficiary:

1. Was not required to meet the PATH requirement within the previous five (5) years; and

2. Does not qualify for an exemption established in Section 4 of this administrative regulation.

(b) A beneficiary shall be required to meet the PATH requirement effective on:

1. The first day of the month following enrollment in Kentucky HEALTH; or

2. The first day of the month following expiration of the three (3) month notice period required by paragraph (a) of this subsection.

(2) A beneficiary who is required to meet the PATH requirement shall be deemed to satisfy the PATH requirement with no additional PATH reporting obligations if the beneficiary:

(a)1. Is enrolled in the Supplemental Nutrition Assistance Program (SNAP); and

2. Meets, or is exempt from meeting, the requirements of the SNAP employment initiative;

(b)1. Is enrolled in Temporary Assistance for Needy Families (TANF); and

2. Meets, or is exempt from meeting, the requirements of the TANF employment initiative;

(c) Is enrolled in the Kentucky Medicaid Premium Assistance program; or

(d) Is employed full time.

(3) Except as provided by subsection (2) of this section, a beneficiary who is subject to the PATH requirement shall use the Web site [www.citizenconnect.ky.gov](http://www.citizenconnect.ky.gov) to:

- (a) Report and track community engagement activities;
- (b) Document completion of a re-entry course; and
- (c) Request an exemption pursuant to Section 1(2) or 4 of this administrative regulation.

Section 3. Failure to Meet PATH Requirement.

(1) In the month immediately following the month in which a beneficiary fails to meet the PATH requirement, the beneficiary ~~may~~**shall have the opportunity to** avoid a suspension from eligibility for Kentucky HEALTH for failing to comply with the PATH requirement by:

- (a) Being current on required hours for the current month; and
- (b) Either:
  - 1. Making up all deficit PATH hours not completed in the prior month; or
  - 2. Completing a re-entry course.

(2)(a) Except as provided by paragraph ~~(b)(a)~~ of this subsection, failure to comply with the PATH requirement shall result in a beneficiary receiving a suspension from the Kentucky HEALTH program. The suspension shall:

- 1. Not end until the beneficiary completes the requirements in paragraph (b) of this subsection or until the beneficiary successfully recertifies for Kentucky HEALTH eligibility for the next benefit year; and
- 2. Begin on the first day of the second month immediately following the month in which the beneficiary failed to meet the PATH requirement.

(b) A beneficiary shall be able to reactivate eligibility on the first day of the month following completion of either:

- 1. Eighty (80) hours of community engagement activities within a thirty (30) day time period; or
- 2. A re-entry course.

(3) A beneficiary who received a suspension from Kentucky HEALTH benefits for failure to comply with the PATH requirement over the twelve (12) month period between benefit year certification dates shall:

- (a) Be terminated from Kentucky HEALTH; and
- (b) Submit a new application to receive Kentucky HEALTH benefits, following a delay of no less than one (1) month.

Section 4. PATH Exempt Groups.

(1) A beneficiary shall be exempt from the PATH requirement if the beneficiary is:

- (a) A former foster youth;
  - (b) A pregnant woman;
  - (c) Medically frail or temporarily vulnerable;
  - (d) A full-time student;
  - (e) Diagnosed with a serious chronic medical condition, validated by a medical professional pursuant to department guidance and review that would prevent the beneficiary from complying; or
  - (f) A primary caregiver of:
    - 1. A minor dependent child under age nineteen (19); or
    - 2. A dependent adult who is disabled.
- (2) The exemption authorized by subsection (1)(f) of this section shall be limited to one (1) exemption per household.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 13, 2018)**

**895 KAR 1:025. Beneficiary premiums.**

RELATES TO: KRS 205.520, **42 C.F.R. 435.915**, 42 U.S.C. 1315

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes requirements for Kentucky HEALTH beneficiaries relating to premium payments.

Section 1. Required Premium Payments. (1) Except as otherwise provided in this administrative regulation and 895 KAR 1:015, a beneficiary shall make monthly premium payments as required by 895 KAR 1:015.

(2)(a) A conditionally eligible beneficiary who is not otherwise exempt from premium payments shall make a first premium payment prior to the start of coverage.

(b) A conditionally eligible beneficiary shall have sixty (60) days from the date of the first invoice from the MCO to make the first premium payment.

(c) The beneficiary's coverage shall become effective the first day of the month in which the initial premium payment is received by the MCO.

(d) If a conditionally eligible beneficiary fails to make the first premium payment within the initial sixty (60) day payment window, the beneficiary shall be subject to the non-payment penalty provisions established at 895 KAR 1:010 and 895 KAR 1:015.

(3)(a) At the time of application, an applicant ~~may~~**shall be given the option to** make a one-time fast-track payment in order to expedite eligibility if the applicant is subsequently determined eligible for coverage.

(b) If an applicant makes a fast-track payment and is determined eligible for coverage, the effective date shall be the first day of the month in which the fast-track payment was made.

(c) A fast-track payment shall meet the requirements established in this paragraph.

1. The fast-track payment amount shall not exceed the highest monthly premium that could be required of that household.

2. The payment shall be fully refundable if:

- a. The applicant is determined to be not eligible for Kentucky HEALTH; or
- b. The applicant:
  - (i) Is determined to be a beneficiary for whom premiums are optional; and
  - (ii) Requests a refund within sixty (60) days of enrollment in Kentucky HEALTH.

(d) If the option to make a fast-track payment is selected on the application, the beneficiary shall not change MCOs except for cause, as ~~established~~**set forth** at 895 KAR 1:010, prior to their annual open enrollment opportunity.

(e) If the beneficiary's monthly premium payment is subsequently calculated upon eligibility determination to be less



than the fast-track payment, the excess fast-track payment shall be credited until the full amount of the fast-track payment is exhausted against:

1. The first monthly premium due; and
2. Any additional premiums due.

(f) If the beneficiary's monthly premium payment is subsequently calculated upon eligibility determination to be more than the fast-track payment, the beneficiary shall remain liable for any balance remaining between the premium amount and fast-track amount.

Section 2. Effective Date for Premium Payments. (1) A beneficiary in either of the following eligibility groups shall have an effective date of coverage as established in the Kentucky Medicaid state plan and consistent with 42 C.F.R. 435.915:

- (a) Former Foster Youth; or
- (b) Pregnant Women.

(2) After approval, each beneficiary known to be medically frail at the time of application for Kentucky HEALTH shall have coverage effective the first day of the month in which the beneficiary applied for coverage.

(3) A beneficiary determined eligible through the presumptive eligibility process established in 907 KAR 20:050 shall have an effective date of coverage as established in 895 KAR 1:010.

Section 3. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner

ADAM M. MEIER, Secretary

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 13, 2018)**

**895 KAR 1:030. Establishment and use of the MyRewards program.**

RELATES TO: KRS 205.520, 42 U.S.C. 1315, 42 C.F.R. 489.24

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the MyRewards account requirements for the Kentucky HEALTH program.

Section 1. Purpose of MyRewards Account. (1) The MyRewards account shall be a Kentucky HEALTH incentive in which a beneficiary with an active account may use it to access

items and services pursuant to subsection (2) of this section that are not covered in the beneficiary's benefit package, as established in 895 KAR 1:035.

(2) Except as provided by subsections (3) and (4) of this section, items and services available through the MyRewards account shall include:

- (a) Vision services; and
- (b) Dental services.

(3) The department shall:

~~(a)[4.]~~ Review additional items and services for availability to users of a MyRewards account; and

~~(b)[2.]~~ Prominently post any approved items or services to its Web site.

(4) Services available in subsection (2) of this section through the beneficiary's MyRewards account shall be limited in scope to services that would be covered under the Kentucky Medicaid state plan if the beneficiary was not receiving the Kentucky HEALTH alternative benefit plan benefit package.

Section 2. Requirements for Maintaining an Active MyRewards Account. (1)(a) To maintain an active MyRewards account, a beneficiary shall make monthly premium payments.

(b) The requirement to make a monthly premium payment to maintain an active MyRewards account shall include each beneficiary who is:

1. A former foster youth;
2. An individual determined to be medically frail or temporarily vulnerable; or
3. A beneficiary who has met the five (5) percent cost sharing limit established in 895 KAR 1:015.

(c) The requirement to make a monthly premium payment to maintain an active MyRewards account shall not apply to a beneficiary who is a pregnant woman.

(2) Only a beneficiary with an active, non-suspended MyRewards account shall be able to utilize the account to access services established in Section 1 of this administrative regulation.

Section 3. Accruals Within a MyRewards Account. (1)(a) A MyRewards account shall not be subject to any annual limit.

(b) A beneficiary shall continuously accrue balances for completion of activities listed in subsection (2) of this section if:

1. The account remains active; and
2. The beneficiary is not otherwise suspended or disenrolled.

(2) A beneficiary ~~may[shall have the opportunity to]~~ accrue balances in the MyRewards account in the following circumstances:

- (a) If the beneficiary completes a healthy behavior activity;
- (b) If an individual in the household accesses preventive services, except that preventive services for children shall be accrued differently for the child and the household;
- (c) At the end of a benefit year in which a beneficiary did not make any non-emergent visits to an emergency department;
- (d) If the beneficiary completes and reports department approved community engagement activities in excess of the hours required of the beneficiary pursuant to the PATH requirement established in 895 KAR 1:020; or
- (e) If the beneficiary completes a department approved education course.

(3) A beneficiary who has a suspended MyRewards account shall accrue balances for completion of an activity listed in subsection (2) of this section if the MyRewards account is unsuspended within sixty (60) calendar days of completing the approved activity.

(4) A beneficiary may accrue funds in the MyRewards account through deductible account rollover as established in 895 KAR 1:040.

(3) A beneficiary who has a suspended MyRewards account shall accrue balances for completion of an activity listed in subsection (2) of this section if the MyRewards account is unsuspended within sixty (60) calendar days of completing the approved activity.

(4) A beneficiary may accrue funds in the MyRewards account through deductible account rollover as established in 895 KAR 1:040.

Section 4. Deductions. **(1)** A beneficiary with an active MyRewards account shall have the account balance reduced, up to a maximum negative balance of \$150 for:

~~(a)[(1)]~~ Failure to make a required premium payment within sixty (60) days of the date of invoice, resulting in a non-payment penalty as established in 895 KAR 1:015; or

**[b](2)** A non-emergent use of the emergency department. Non-emergent use of the emergency department shall exist if:

**1. [(a)]** The beneficiary did not need emergency services;

**2. [(b)]** A medical screening conducted pursuant to 42 C.F.R. [CFR] 489.24 was completed by the emergency department; [(c)] and

**3. [(e)]** The beneficiary failed to contact the nurse hotline operated by the MCO with which the beneficiary is enrolled within twenty-four (24) hours prior to utilizing the emergency department.

**(2)(a) A MyRewards account deduction of twenty-five (25) dollars shall occur for each incident of premium non-payment.**

**(b) A MyRewards account deduction shall be assessed for non-emergent use of an emergency department as follows:**

**1. First occurrence, twenty (20) dollars;**

**2. Second occurrence, fifty (50) dollars; and**

**3. Third and each subsequent occurrence, seventy-five (75) dollars.**

Section 5. Payout of Account. (1) A former beneficiary who disenrolls from Kentucky HEALTH by obtaining commercial insurance and who remains commercially insured for a minimum of eighteen (18) months may apply to receive a payout of up to half of that beneficiary's remaining MyRewards account balance up to \$500, subject to the following requirements:

(a) The former beneficiary shall provide attestation of commercial insurance; and

(b) The former beneficiary shall be without any type of Medicaid assistance in the commonwealth for at least eighteen (18) consecutive months following the date of disenrollment from Kentucky HEALTH.

(2) A MyRewards account shall be closed after the payout requested by a former beneficiary under this section.

Section 6. Establishment of Early Reentry or Early Reactivation Opportunity. (1) A beneficiary who is subject to a six (6) month penalty period under 895 KAR 1:010 or 895 KAR 1:015 ~~may~~**shall be given the opportunity to** re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period.

(2) The opportunity to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account, as applicable, prior to the expiration of the six (6) month penalty period shall only be available to an individual one (1) time per benefit year per penalty reason type.

Section 7. Requirements for Re-entry. A beneficiary seeking to re-enter Kentucky HEALTH or reactivate the beneficiary's MyRewards account ~~established~~**set forth** in this administrative regulation, as applicable, prior to the expiration of the six (6)-month penalty period shall:

(1) Complete a re-entry course;

(2) Pay any premium payment required for the first month of coverage to restart benefits; and

(3) Pay any past due premiums owed for each month in which the individual received healthcare coverage through Kentucky HEALTH during the sixty (60) day payment period prior to the effective date of the applicable six (6) month penalty period.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

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**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(As Amended at ARRS, November 13, 2018)**

**895 KAR 1:035. Covered services within the Kentucky HEALTH program.**

RELATES TO: KRS 205.520, 205.622, 369.101 - 369.120, 42 C.F.R. ~~440.347~~, Parts 447, 489, 42 U.S.C. ~~1315~~, 1396a

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. ~~1315(b)(1)-(4)~~**1315(b)(1)-(4)**, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the covered benefits that shall be afforded to beneficiaries participating in the Kentucky HEALTH program.

Section 1. Alternative Benefit Plan (ABP). (1)(a) An ACA expansion adult not eligible under paragraph (b) of this ~~subsection~~**section** shall receive benefits:

1. As established in the Kentucky HEALTH alternative benefit plan approved by the Centers for Medicare and Medicaid Services; and

2. In accordance with the essential health benefit requirements under 42 C.F.R. 440.347 for alternative benefit plans.

(b) An ACA expansion adult shall receive benefits in accordance with the Kentucky Medicaid state plan, as established by KAR Title 907, if the ACA expansion adult:

1. Is pregnant;

2. Is a former foster youth; or

3. Is determined to be, or otherwise deemed, medically frail or temporarily vulnerable pursuant to 895 KAR 1:055.

(2) The Kentucky HEALTH ABP shall include covered services in each of the following categories:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity services;

(e) Mental health and substance abuse services;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive care services;

(j) Early and periodic screening, diagnostic, and treatment services for beneficiaries nineteen (19) and twenty (20) years of age; and

(k) Any other services approved by the Centers for Medicare and Medicaid Services in the Kentucky HEALTH alternative benefit plan.

(3) The following services shall not be covered under the Kentucky HEALTH alternative benefit plan:

(a) Services that are not medically necessary;

(b) Dental services;

(c) Vision services;

(d) Nonemergency medical transportation; and

(e) Any other services not approved by the Centers for Medicare and Medicaid Services in the alternative benefit plan.

Section 2. State Plan Benefits. (1) A beneficiary in one (1) of



the following groups shall receive covered services as established by the Kentucky Medicaid state plan, subject to the coverage criteria, limitations, and procedures specified in the Kentucky Medicaid state plan, as established by KAR Title 907[KAR] and this title:

- (a) Parents and caretaker relatives;
- (b) Transitional medical assistance;
- (c) Pregnant women;
- (d) Former foster youth; and
- (e) Medically frail, or temporarily vulnerable.

(2) The following services shall not be covered for beneficiaries under this section:

- (a) Services that are not medically necessary;
- (b) Nonemergency medical transportation for methadone treatment services, except for the following groups:

- 1. Pregnant women;
- 2. Former foster youth; or
- 3. Nineteen (19) and twenty (20) year-olds in accordance with EPSDT requirements; and

(c) Any other services not covered by the Kentucky Medicaid state plan.

Section 3. Coverage of Preventive Care Services. (1) For a beneficiary with a deductible account as established in 895 KAR 1:040, any preventive care service shall not be tracked against a beneficiary's deductible.

(2) Preventive care service shall include:

- (a) The preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF);
- (b) The approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;

(c) Preventive care and screening recommended by the Health Resources and Services Administration Bright Future Program Project; or

(d) Preventive services recommended by the Institute of Medicine.

Section 4. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner

ADAM M. MEIER, Secretary

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#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, November 13, 2018)

#### 895 KAR 1:040. Deductible accounts within the Kentucky HEALTH program.

RELATES TO: KRS 205.520, 42 U.S.C. 1315

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity

presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes requirements for the use of deductible accounts for adult Kentucky HEALTH beneficiaries.

Section 1. Establishment of Deductible Account. (1) An adult beneficiary shall begin each benefit year with a deductible account with a dollar value equivalent to \$1,000 as a mechanism to track the first \$1,000 of non-preventive covered services utilized by the beneficiary in the benefit year.

(2) This section shall not apply to an adult beneficiary who is a pregnant woman.

(3) As necessary, the department shall:

(a) Freeze deductible accounts to accommodate adult beneficiaries who become pregnant; or

(b) Pro-rate deductible accounts to accommodate an adult beneficiary who enrolls in Kentucky HEALTH for a partial benefit year.

Section 2. Purpose and Use of Deductible Account. (1) The deductible account shall cover the Kentucky HEALTH deductible, which shall apply/be applicable to all non-preventive care services.

(2) Preventive care services as established in 895 KAR 1:035[045] shall not be:

(a) Subject to the \$1,000 Kentucky HEALTH deductible; and

(b) Deducted from the deductible account.

Section 3. Continued Access to Service and Monthly Statement. (1) An adult beneficiary who receives more than \$1,000 worth of non-preventive services in the benefit year shall retain access to all covered services despite having exhausted the deductible account.

(2) Each adult beneficiary shall receive a monthly deductible account statement, which shall include:

(a) The cost of non-preventive care services that the adult beneficiary has utilized during the statement period; and

(b) The deductible account balance that the adult beneficiary has remaining.

Section 4. Deductible Account Balance Transfer and Calculation. (1) An adult beneficiary with funds remaining in a deductible account at the end of the benefit year may transfer up to fifty (50) percent of the remaining deductible account balance to the beneficiary's MyRewards account established in 895 KAR 1:030.

(2) For a beneficiary who was not an active member of Kentucky HEALTH for the entire benefit year, the deductible account balance that is eligible to be transferred to an adult beneficiary's MyRewards account shall be calculated on a prorated basis based on the beneficiary's active months during the benefit year.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner

ADAM M. MEIER, Secretary

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 13, 2018)**

**895 KAR 1:045. Accommodations, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program.**

RELATES TO: KRS 205.520, 42 U.S.C. 1315

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes a requirement for reasonable modifications and accommodations for Kentucky HEALTH beneficiaries, a random control group, and an eligibility and covered services appeals process.

Section 1. Reasonable Accommodations. (1) The department shall provide reasonable accommodations or modifications, in accordance with subsection (2) of this section, to Kentucky HEALTH requirements and processes as necessary to support and assist each beneficiary with a protected disability or disabilities to meet the requirements of this title.

(2) Reasonable accommodations and modifications shall include the following actions if requested by a beneficiary with a protected disability or disabilities:

(a) An exemption or exemptions from PATH participation if a beneficiary is unable to participate for reasons related to a protected disability;

(b) A modification in the number of hours of PATH participation required if a beneficiary is unable to participate for the required number of hours;

(c) Provision of support services necessary to comply with requirements, if compliance is possible with supports;

(d) Assistance with demonstrating eligibility for a good cause exemption to the Kentucky HEALTH requirements, in accordance with 895 KAR 1:020, Section 1;

(e) Assistance with appealing a suspension for failure to meet requirements;

(f) Assistance with complying with any documentation requirements of Kentucky HEALTH, including for community engagement activities; or

(g) Assistance with understanding notices and program rules related to Kentucky HEALTH requirements.

Section 2. Random Control Group. (1) Except as otherwise provided in subsection (2) of this section, all policies, requirements, procedures, and timeframes established for Kentucky Medicaid in KAR Title 907[KAR] shall apply to the Kentucky HEALTH random control group.

(2) An individual assigned to the Kentucky HEALTH random control group shall not be:

(a) Subject to the requirements for Kentucky HEALTH eligibility established in 895 KAR 1:010; or

(b) Eligible for coverage prior to the first day of the month of application.

Section 3. Eligibility Appeals. An appeal by an applicant, conditionally eligible beneficiary, or beneficiary regarding an eligibility determination shall be governed by KRS Chapter 13B and 907 KAR 1:560.

Section 4. Covered Services Appeals and Hearings. Except as otherwise provided in KAR Title 895[KAR], a beneficiary appeal regarding a benefit determination by a managed care organization shall be governed by KRS Chapter 13B and 907 KAR 17:010.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

JILL R. HUNTER, Acting Commissioner

ADAM M. MEIER, Secretary

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 13, 2018)**

**895 KAR 1:050. Enrollment and reimbursement for providers in the Kentucky HEALTH program.**

RELATES TO: KRS 205.520, 205.622, 369.101 - 369.120, 42 U.S.C. 1315

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

Section 1. Provider Enrollment Requirements. (1) A provider shall be automatically eligible for Kentucky HEALTH provider participation if the provider is currently enrolled as a Medicaid provider~~[or as a provider with an MCO]~~ to provide Medicaid services to Kentucky Medicaid recipients.

(2) ~~A[To enroll as a provider under Title 895 KAR, the]~~ provider shall comply with all Medicaid enrollment procedures and requirements established in KAR Title 907[KAR].

Section 2. Provider Reimbursement. (1)~~[A provider shall be reimbursed at the reimbursement rate established by the MCO for the MCO covered services.~~

~~(2)]~~ A provider shall be reimbursed for services covered by 895 KAR 1:030, Section 1, through the beneficiary's MyRewards account on a fee-for-service basis. A claim for services covered by the MyRewards account shall not be submitted to the beneficiary's MCO.

~~(2)](3)]~~ A provider shall not receive reimbursement under KAR Title 895[KAR] for services provided to an individual if:

(a) The individual is not eligible for participation in the Kentucky HEALTH program pursuant to 895 KAR 1:010; or

(b) The individual is suspended or otherwise not enrolled in Kentucky HEALTH on the date the service is provided.

Section 3. Non-covered Services Reimbursed via MyRewards Account. (1) A provider who seeks to receive reimbursement for an otherwise non-covered service that is reimbursable via a beneficiary's MyRewards account established by 895 KAR 1:030 shall be at risk for the cost of the service provided, if:

(a)1. The provider fails to place a hold on funds in the account; and

2. Funds are not available at the time services are billed;

(b) The beneficiary's MyRewards account was inactive or suspended at the time the service was rendered; or

(c) The hold on the funds placed by the provider subsequently expired due to the provider's failure to submit a claim within thirty (30) days of the date of service.

(2) A provider may bill a beneficiary with an inactive or suspended MyRewards account for services not covered by the beneficiary's benefit plan as established in 895 KAR 1:030 or 895 KAR 1:025 if the services are for:

(a) Vision; or

(b) Dental.

Section 4. MCO Payment. (1)(a) Except as provided in paragraph (b) of this subsection, a provider shall:

1. Accept MCO reimbursement as payment in full for services rendered; and

2. Not collect from a beneficiary any portion of the provider's charge for a covered service that is not reimbursed by the MCO.

(b) A provider shall collect the copays required by the Kentucky Medicaid state plan, for beneficiaries in the copay plan.

(2)(a) A provider may seek beneficiary reimbursement for non-covered services, including services received by the beneficiary during a suspension or other penalty period, if the following four (4) conditions are met:

1. [(a)] The provider has an established policy for billing all patients for services not covered by a third party and does not bill only Medicaid or Kentucky HEALTH patients;

2. [(b)] The patient is advised prior to receiving a non-covered service that Kentucky HEALTH will not pay for the service;

3. [(c)] The patient agrees to be personally responsible for the payment; and

4. a. [(d)] The agreement is made in writing between the provider and the patient, detailing both the service and the amount to be paid by the patient; or

b. For services provided by a hospital, the requirements of this subparagraph shall be satisfied if the hospital's consent for services form:

(i) Provides informed consent to the beneficiary; and

(ii) Is signed and dated by the beneficiary.

(b)1. The provisions of paragraph (a) of this subsection shall not apply to a provider complying with 42 U.S.C. 1395dd until the beneficiary has been stabilized.

2. After a beneficiary has been stabilized, a provider complying with 42 U.S.C. 1395dd shall comply with paragraph (a) of this subsection if billing a suspended Kentucky HEALTH beneficiary.

Section 5. Third Party Liability. A provider shall comply with KRS 205.622.

Section 6. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which a beneficiary has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each beneficiary using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the beneficiary has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 7. Auditing Authority. The department or MCO in which a beneficiary is enrolled ~~may[shall have the authority to]~~ audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record, including any activity related to a beneficiary's use of a MyRewards account.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

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## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, November 13, 2018)

**895 KAR 1:055. Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program.**

RELATES TO: KRS 205.520, 42 C.F.R. Part 447, 42 U.S.C. 1315

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH demonstration waiver has been approved and it shall, on a continuing basis, determine and establish how the commonwealth provides Medicaid services and supports for certain Medicaid members. This administrative regulation establishes those beneficiaries who shall qualify as medically frail or temporarily vulnerable and establishes the requirements for determination of that status.

Section 1. Designation as Medically Frail at Time of Application. A beneficiary shall be designated as medically frail at the time of application if the beneficiary is:

(1) A beneficiary with HIV or AIDS as identified by the Ryan White Program, 42 U.S.C. 300ee et seq.

- (2) Receiving retirement, survivors, and disability insurance (RSDI) income based on disability; or
- (3) Chronically homeless.

Section 2. Medically Frail Screenings. (1) A beneficiary who is not designated as medically frail at the time of application shall be reviewed for medically frail status at any of the following times:

- (a) Upon beneficiary request;
- (b) During the benefit year if documentation demonstrates that the beneficiary may have a medically frail condition; or
- (c) If claims history or provider documentation demonstrates that the beneficiary may no longer have a medically frail condition.

(2) A medically frail beneficiary shall be reviewed at least annually by the managed care organization to determine if the beneficiary is eligible for continued designation as medically frail.

(3) In order to verify a beneficiary's medically frail condition, the managed care organization shall consider:

- (a) The beneficiary's medical records;
- (b) The beneficiary's medical claim data;
- (c) Any other information relevant to the beneficiary's health condition; or
- (d) Physician attestation of medically frail status.

Section 3. Accommodation due to Temporary Vulnerability. (1) A beneficiary shall be designated as temporarily vulnerable by the department if the beneficiary is:

- (a) A refugee, as defined by KRS 186.010(13)(c), during the first twelve (12) months after the refugee entered the United States; or
- (b) A victim of domestic violence and abuse.

(2) An individual who is designated as temporarily vulnerable shall:

- (a) Pay premiums for access to a MyRewards account; and
- (b) Be exempt from the following Kentucky HEALTH requirements:
  - 1. Payment of premiums for medical services;
  - 2. Copays for medical services; and
  - 3. Completion of the PATH requirement during the entire period of temporary vulnerability.

Section 4. Auditing Authority. The department or MCO in which a beneficiary is enrolled may[shall have the authority to] audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record, including any activity related to a beneficiary's use of a MyRewards account.

Section 5. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 6. Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563 and 895 KAR 1:045.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010 and 895 KAR 1:045.

JILL R. HUNTER, Acting Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2018

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**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Inspector General**

**Division of Certificate of Need**

**(As Amended at ARRS, November 13, 2018)**

**900 KAR 5:020. State Health Plan for facilities and services.**

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2018 Update to the 2017-2019 State Health Plan shall be used to:

- (1) Review a certificate of need application pursuant to KRS 216B.040; and
- (2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2018 Update to the 2017-2019 State Health Plan", November[October 15,] 2018[November 2017], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need[Health Policy], 275 East Main Street, 5E-A[4WE], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVE DAVIS, Inspector General

ADAM M. MEIER, Secretary

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CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Public Health**

**Division of Public Health Protection and Safety**

**(As Amended at ARRS, November 13, 2018)**

**902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.**

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 61, 40 C.F.R. 261, 42 U.S.C. 2011 - 2297g-4[Pub.L. 96-573, Pres. EO 11988]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1), [211.846, 211.852]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations[provide by administrative regulation] for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

Section 1. Definitions. (1) "Agreement state" means a state with which[that] the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under



subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state["Active maintenance" means a significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Section 18 and Section 19 of this administrative regulation are met. This term includes ongoing activities, such as the pumping and treatment of water from a disposal unit, or one (1) time measures, such as replacement of a disposal unit cover. This term does not include custodial activities, such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

(2) "Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

(3) "Chelating agent" means:

(a) Amine polycarboxylic acids, such as EDTA, DTPA, or hydroxy-carboxylic acids; and (b) Polycarboxylic acids, such as citric acid, carbolic acid, or gluconic acid.

(4) "Commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. This term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

(5) "Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

(6) "Disposal" means the isolation of radioactive wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.

(7) "Disposal site" means that portion of a land disposal facility that is used for disposal of waste. It consists of disposal units and a buffer zone.

(8) "Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal the unit is usually a trench.

(9) "Engineered barrier" means a manmade structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in this administrative regulation.

(10) "Explosive material" means a chemical compound, mixture, or device that produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(11) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 C.F.R. Part 261.

(12) "Hydrogeologic unit" means a soil or rock unit or zone that by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of ground water.

(13) "Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, or other pursuits in which an individual might be unknowingly exposed to radiation from the waste.

(14) "Intruder barrier" means: (a) A sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder shall meet the performance objectives set forth in this administrative regulation; or (b) Engineered structures that provide equivalent protection to the inadvertent intruder.

(15) "Land disposal facility" means the land, buildings, or

equipment intended to be used for the disposal of radioactive wastes. A "geologic repository" as defined by C.F.R. Parts 60 or 63 is not considered a land disposal facility.

(16) "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

(17) "Near-surface disposal facility" means a land disposal facility in which radioactive waste is disposed of within approximately the upper thirty (30) meters of the earth's surface.

(18) "Pyrophoric liquid" means a liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (fifty-four and five-tenths (54.5) degrees Centigrade). A pyrophoric solid is a solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and if ignited burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(19) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

(20) "Stability" means structural stability.

(21) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(22) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-level Radioactive Waste Policy Act, Pub.L. 96-573, that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e.(2) of the Atomic Energy Act, 42 U.S.C. 2011-2297g-4(uranium or thorium tailings and waste)].

Section 2. Applicability. This administrative regulation shall apply to a licensee. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 61.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 61.4;

(b) 10 C.F.R. 61.5;

(c) 10 C.F.R. 61.8;

(d) 10 C.F.R. 61.16;

(e) 10 C.F.R. 61.20;

(f) 10 C.F.R. 61.23 (i) and (j);

(g) 10 C.F.R. 61.70;

(h) 10 C.F.R. 61.71;

(i) 10 C.F.R. 61.72;

(j) 10 C.F.R. 61.73;

(k) 10 C.F.R. 61.83; or

(l) 10 C.F.R. 61.84.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) **Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the ["]Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC or an agreement state.["]shall be used in lieu of federal references to the "Commission" and the "NRC."**

(4) The report required by 10 C.F.R. 61.80(h) and (i) shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.[person-prescribing land disposal that involves disposal in the uppermost portion of the earth, approximately thirty (30) meters, of radioactive waste



received from another person except:

(1) Disposal of "by-product material" as defined by 902 KAR 100:010 in quantities greater than 10,000 kilograms and containing more than five (5) millicuries of radium-226; or

(2) Disposal of licensed material as provided for in 902 KAR 100:021.

**Section 3. License Required.** (1) A person shall not receive, possess, or dispose of waste received from another person at a land disposal facility unless authorized by a license issued by the cabinet as provided by this administrative regulation and 902 KAR 100:021.

(2) Each person shall file an application with the cabinet as provided by 902 KAR 100:040, Section 4, and obtain a license as provided in this administrative regulation before commencing construction of a land disposal facility. Failure to comply with this requirement shall be grounds for denial of a license.

**Section 4. Content of Application.** In addition to the requirements of set forth in 902 KAR 100:040, Section 5, an application to receive from others, possess, or dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections 5 through 9 of this administrative regulation.

**Section 5. General Information.** The general information shall include each of the following:

(1) Identity of the applicant including:

(a) The full name, address, telephone number, and description of the business or occupation of the applicant;

(b) If the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;

(c) If the applicant is a corporation or an unincorporated association, the state where it is incorporated or organized and the principal location where it does business and the names and addresses of its directors and principal officers; and

(d) If the applicant is acting as an agent or representative of another person in filing the application, all information required by this subsection shall be supplied with respect to the other person.

(2) Qualifications of the applicant.

(a) The organizational structure of the applicant, both off-site and on-site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) The technical qualifications, including training and experience, of the applicant and members of the applicant's staff to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in paragraph (a) of this subsection shall be provided;

(c) A description of the applicant's personnel training program; and

(d) The plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) The location of the proposed disposal site;

(b) The general character of the proposed activities;

(c) The types and quantities of radioactive waste to be received, possessed, or disposed of;

(d) Plans for use of the land disposal facility for purposes other than disposal of radioactive wastes; and

(e) The proposed facilities and equipment.

(4) Proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

**Section 6. Specific Technical Information.** The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this administrative regulation shall be met:

(1) A description of the natural and demographic disposal site characteristics as determined by disposal site selection and

characterization activities. The description shall include geologic, geotechnical, hydrologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity;

(2) A description of the design features of the land disposal facility and the disposal units. For near-surface disposal, the description shall include those design features related to:

(a) Infiltration of water;

(b) Integrity of covers for disposal units;

(c) Structural stability of backfill, wastes, and covers;

(d) Contact of wastes with standing water;

(e) Disposal site drainage;

(f) Disposal site closure and stabilization;

(g) Elimination to the extent practicable of long-term disposal site maintenance;

(h) Inadvertent intrusion; occupational exposures;

(i) Disposal site monitoring; and

(j) Adequacy of the size of the buffer zone for monitoring and potential mitigative measures;

(3) A description of the principal design criteria and their relationship to the performance objectives;

(4) A description of the design basis natural events or phenomena and their relationship to the principal design criteria;

(5) A description of codes and standards that the applicant has applied to the design and that will apply to construction of the land disposal facilities;

(6) A description of the construction and operation of the land disposal facility. The description shall include, at a minimum, the:

(a) Methods of construction of disposal units;

(b) Waste emplacement;

(c) Procedures for and areas of waste segregation;

(d) Types of intruder barriers;

(e) On-site traffic and drainage systems;

(f) Survey control program;

(g) Methods and areas of waste storage; and

(h) Methods to control surface water and ground water access to the wastes. The description shall also include the methods to be employed in the handling and disposal of wastes containing chelating agents or other nonradiological substances that might affect meeting the performance objectives of this administrative regulation;

(7) A description of the disposal site closure plan, including those design features that are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance;

(8) An identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the low-level wastes after removal of active institutional control;

(9) A description of the kind, amount, classification, and specifications of the radioactive material proposed to be received, possessed, or disposed of at the land disposal facility;

(10) A description of the quality control program for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls shall be included;

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section 18 of this administrative regulation and occupational radiation exposure to ensure compliance with the requirements of 902 KAR 100:020 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. Both routine operations and accidents shall be addressed. The program description shall include procedures, instrumentation, facilities, and equipment;

(12) A description of the environmental monitoring program to provide data to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration of radionuclides is indicated; and

(13) A description of the administrative procedures that the applicant shall apply to control activities at the land disposal facility.

**Section 7. Technical Analyses.** The specific technical

information shall also include the following analyses needed to demonstrate that the performance objectives of these administrative regulations shall be met:

(1) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity shall include air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly:

(a) Identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes; and

(b) Demonstrate that there is reasonable assurance that the exposures to humans from the release of radioactivity shall not exceed the limits set forth in Section 18 of this administrative regulation;

(2) Analyses of the protection of individuals from inadvertent intrusion shall include demonstration that there is reasonable assurance the waste classification and segregation requirements shall be met and that adequate barriers to inadvertent intrusion shall be provided;

(3) Analyses of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, or disposal of waste. The analyses shall provide reasonable assurance that exposures shall be controlled to meet the requirements of 902 KAR 100:020; and

(4) Analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after closure shall be based upon analyses of active natural processes such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there shall not be a need for ongoing active maintenance of the disposal site following closure.

Section 8. Institutional Information. The institutional information submitted by the applicant shall include:

(1) A certification by the Commonwealth of Kentucky, or federal agency that owns the disposal site, that the Commonwealth of Kentucky or federal agency is prepared to accept transfer of the license if the provisions of Section 15 of this administrative regulation are met, and shall assume responsibility for custodial care after site closure and postclosure observation and maintenance; and

(2) If the proposed disposal site is on land not owned by the Commonwealth of Kentucky or federal government, the applicant shall submit evidence that arrangements have been made for assumption of ownership in fee by the Commonwealth of Kentucky or federal agency before the cabinet issues a license.

Section 9. Financial Information. The financial information shall be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements of this administrative regulation.

Section 10. Standards for Issuance of a License. A license for the receipt, possession, or disposal of waste containing or contaminated with radioactive material shall be issued by the cabinet upon finding that:

(1) The issuance of the license shall not constitute an unreasonable risk to the health and safety of the public;

(2) The applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life and property;

(3) The applicant's proposed disposal site; disposal design; land disposal facility operations; including equipment, facilities, procedures, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that the general population shall be protected from releases of radioactivity as specified in the performance objective in Section 18 of this administrative regulation;

(4) The applicant's proposed disposal site; disposal site design; land disposal facility operations; including equipment, facilities, procedures, disposal site closure, and postclosure institutional control are adequate to protect the public health and safety in that they shall provide reasonable assurance that individual inadvertent intruders are protected in accordance with the performance objective in Section 19 of this administrative regulation;

(5) The applicant's proposed disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in that they shall provide reasonable assurance that the standards for radiation protection set out in 902 KAR 100:019 shall be met;

(6) The applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they shall provide reasonable assurance that long-term stability of the disposed waste and the disposal site shall be achieved and shall eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure;

(7) The applicant's demonstration provides reasonable assurance that the applicable technical requirements of this administrative regulation shall be met;

(8) The applicant's proposal for institutional control provides reasonable assurance that the care shall be provided for the length of time found necessary to ensure the findings in Subsection (3) through (6) of this section and that the institutional control meets the requirements of Section 27 of this administrative regulation; and

(9) The information on financial assurances meets the requirements of this administrative regulation.

Section 11. Conditions of Licenses. (1) A license issued under this administrative regulation, or a right thereunder, may be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, through transfer of control of the license to a person. A transfer, assignment, or disposition shall occur only if the cabinet finds, after securing full information, that the transfer is in accordance with the provisions of the Act. The cabinet shall provide the approval or denial in writing in the form of a license amendment.

(2) The licensee shall submit a written statement under oath upon request of the cabinet, before termination of the license, and to enable the cabinet to determine if the license shall be modified, suspended, or revoked.

(3) The license shall be terminated only on the full implementation of the final closure plan as approved by the cabinet, including postclosure observation and maintenance.

(4) The licensee shall be subject to the provisions of the Act, 902 KAR Chapter 100, and orders of the cabinet. The terms and conditions of the license shall be subject to amendment, revision, or modification.

(5) Each person licensed by the cabinet as authorized by this administrative regulation shall confine possession and use of materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the cabinet has inspected the land disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license.

(7) The cabinet may incorporate in a license at issuance, or thereafter, by 902 KAR Chapter 100 or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste necessary in order to:

(a) Protect health or to minimize danger to life or property; and

(b) Require reports and the keeping of records and to provide for inspections of activities under the license as necessary or appropriate to effectuate the purposes of the Act and 902 KAR Chapter 100.

(8) The authority to dispose of wastes expires on the date stated in the license. An expiration date on a license applies only to the aboveground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for carrying out site closure, postclosure observation,

and transfer of the license to the site owner.

~~Section 12. Application for Renewal or Closure. (1) An application for renewal or an application for closure shall be filed at least ninety (90) days prior to license expiration.~~

~~(2) An application for renewal of a license shall be filed in accordance with Sections 4 through 9 of this administrative regulation. An application for closure shall be filed in accordance with Section 13 of this administrative regulation. Information contained in previous applications, statements, or reports filed with the cabinet under the license may be incorporated by reference if the references are clear and specific.~~

~~(3) In a case in which a licensee has filed an application in proper form for renewal of a license, the license shall not expire until the cabinet has taken action on the application for renewal.~~

~~(4) In determining if a license shall be renewed, the cabinet shall apply the criteria set forth in Section 10 of this administrative regulation.~~

~~Section 13. Contents of Application for Closure. (1) Prior to final closure of the disposal site, or as otherwise directed by the cabinet, the applicant shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under Section 6(7) of this administrative regulation that includes each of the following:~~

~~(a) Additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;~~

~~(b) The results of tests, experiments, or other analyses relating to backfill of excavated areas; closure and sealing; waste migration and interaction with emplacement media; or other tests, experiments, or analysis pertinent to the long-term containment of emplaced waste within the disposal site;~~

~~(c) Proposed revision of plans for:~~

~~1. Decontamination or dismantlement of surface facilities;~~

~~2. Backfilling of excavated areas; or~~

~~3. Stabilization of the disposal site for postclosure care; and~~

~~(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.~~

~~(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with subsection (1) of this section, the cabinet shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of this administrative regulation shall be met.~~

~~Section 14. Postclosure Observation and Maintenance. (1) The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the cabinet in accordance with Section 15 of this administrative regulation.~~

~~(2) Responsibility for the disposal site shall be maintained by the licensee for at least five (5) years.~~

~~(3) A shorter or longer time period for postclosure observation and maintenance may be established and approved as part of the site closure plan, based on site-specific conditions.~~

~~Section 15. Transfer of License. Following closure and the period of postclosure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred if the cabinet finds:~~

~~(1) The closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;~~

~~(2) Reasonable assurance has been provided by the licensee that the performance objectives of this administrative regulation are met;~~

~~(3) Funds and necessary records for care shall be transferred to the disposal site owner;~~

~~(4) The postclosure monitoring program is operational for~~

~~implementation by the disposal site owner; and~~

~~(5) The Commonwealth of Kentucky or federal agency that shall assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Section 10(8) of this administrative regulation shall be met.~~

~~Section 16. Termination of License. (1) Following a period of institutional control needed to meet the requirements found necessary under Section 10 of this administrative regulation, the licensee may apply for an amendment to terminate the license.~~

~~(2) This application shall be reviewed in accordance with the provisions of 902 KAR 100:040, Section 4.~~

~~(3) A license shall be terminated only if the cabinet finds:~~

~~(a) The institutional control requirements found necessary under Section 10(8) of this administrative regulation have been met;~~

~~(b) Additional requirements resulting from new information developed during the institutional control period have been met; and~~

~~(c) Permanent monuments or markers warning against intrusion have been installed.~~

~~Section 17. General Requirement. Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals are within the limits established in the performance objectives in Section 18 through Section 21 of this administrative regulation.~~

~~Section 18. Protection of the General Population from Releases of Radioactivity. A concentration of radioactive material that may be released to the general environment in groundwater, surface water, air, soil, plants, or animals shall not result in an annual dose exceeding an equivalent of twenty-five (25) millirems to the whole body, seventy-five (75) millirems to the thyroid, and twenty-five (25) millirems to any other organ of a member of the public. Reasonable effort shall be made to maintain releases of radioactivity in effluents to the general environment as low as it is reasonably achievable.~~

~~Section 19. Protection of Inadvertent Intrusion. Design, operation, and closure of the land disposal facility shall ensure protection of an individual inadvertently intruding into the disposal site and occupying the site or contacting the waste any time after active institutional controls over the disposal site are removed.~~

~~Section 20. Protection of Individuals During Operations. Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in 902 KAR 100:019, except for releases of radioactivity in effluents from the disposal facility, which shall be governed by Section 18 of this administrative regulation. Every reasonable effort shall be made to maintain radiation exposures as low as is reasonably achievable.~~

~~Section 21. Stability of the Disposal Site After Closure. The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.~~

~~Section 22. Disposal Site Suitability Requirements for Land Disposal. Disposal site suitability for near-surface disposal. The following are the minimum characteristics a disposal site shall have to be acceptable for use as a near-surface disposal facility:~~

~~(1) The primary emphasis in disposal site suitability is isolation of wastes, and the disposal site features that ensure that the long-term performance objectives are met.~~

~~(2) The disposal site shall be capable of being characterized, modeled, analyzed, and monitored.~~

~~(3) Within the region where the facility is to be located, a disposal site shall be selected so that projected population growth~~

and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of this administrative regulation.

(4) Areas shall be avoided having known natural resources that, if exploited, would result in failure to meet the performance objectives of this administrative regulation.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area, or wetland, as defined in U.S. Executive Order 11988, Flood plain Management Guidelines.

(6) Upstream drainage areas shall be minimized to decrease the amount of run-off that could erode or inundate waste disposal units.

(7)(a) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste shall not occur.

(b) The cabinet shall consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics may result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement may result in the performance objectives being met.

(c) In no case shall waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided if tectonic processes, such as faulting, folding, seismic activity, or vulcanism may occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided if surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with a frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this administrative regulation, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of this administrative regulation or significantly mask the environmental monitoring program.

Section 23. Disposal Site Design for Land Disposal. Disposal site design for near-surface disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives shall be met.

(3) The disposal site shall be designed to complement and improve the ability of the disposal site's natural characteristics to assure that the performance objectives shall be met.

(4) Covers shall be designed to minimize water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients that shall not result in erosion that shall require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

Section 24. Land Disposal Facility Operation and Disposal Site Closure; Near-surface Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A in 902 KAR 100:021 shall

be segregated from other wastes by placing in disposal units that are sufficiently separated from disposal units for the other waste classes so that an interaction between Class A wastes and other wastes shall not result in the failure to meet the performance objectives of this administrative regulation. This segregation is not necessary for Class A wastes if they meet the stability requirements in 902 KAR 100:021, Section 7(2).

(2) Wastes designated as Class C in 902 KAR 100:021 shall be disposed of so that the top of the waste is a minimum of five (5) meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in subsection (1) of this section, only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. All waste shall be disposed of in accordance with requirements of subsections (4) through (11) of this section.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and allows the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum shall permit the licensee to comply with all provisions of 902 KAR 100:019, Sections 10 and 11, if the license is transferred as authorized by Section 15 of this administrative regulation.

(7) The boundaries and locations of each disposal unit shall be accurately located and mapped by means of a land survey.

(8) Near-surface disposal units shall be marked in a way that the boundaries of each unit can be easily defined.

(9) Three (3) permanent survey marker control points, referenced to United States Geological Survey (USGS) or National Geodetic Survey (NGS) survey control stations, shall be established on the site to facilitate surveys.

(10) The USGS or NGS control stations shall provide horizontal and vertical controls as checked against USGS or NGS record files.

(11) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Section 25 of this administrative regulation and take mitigative measures if needed.

(12) Closure and stabilization measures set forth in the approved site closure plan shall be carried out as each disposal unit is filled and covered.

(13) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(14) Only wastes containing or contaminated with radioactive materials shall be disposed of at the disposal site.

(15) A proposal for disposal of waste that is not generally acceptable for near-surface disposal because the waste form and disposal methods need to be different, and in general more stringent than those specified for Class C waste, may be submitted to the cabinet for approval.

Section 25. Environmental Monitoring. (1)(a) If a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics.

(b) The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site.

(c) For those characteristics that are subject to seasonal variation, data shall cover at least a twelve (12) month period.

(2)(a) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program.

(b) Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and the need for mitigative measures.

(c) The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for postoperational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of radionuclides from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of radionuclides that would indicate that the performance objectives may not be met.

Section 26. Alternative Requirements for Design and Operations. The cabinet may, upon request or on its own initiative, authorize provisions other than those set forth in Sections 23 through 25 of this administrative regulation for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis if it finds reasonable assurance of compliance with the performance objectives of this administrative regulation.

Section 27. Institutional Requirements. (1) Land ownership. Disposal of radioactive waste received from other persons may be permitted only on land owned, in fee, by the Commonwealth of Kentucky or federal government.

(2) Institutional control.

(a) The land owner or custodial agency shall carry out an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator.

(b) The institutional control program shall also include, in part, carrying out an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other requirements as determined by the cabinet in accordance with 10 C.F.R. 61.59, and administration of funds to cover the costs for these activities.

(c) The period of controls shall be determined by the cabinet in accordance with 10 C.F.R. 61.59, but controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

Section 28. Alternative Requirements for Waste Classification and Characteristics. The cabinet licensing a low-level disposal facility may, upon request or on its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis if, after evaluation of the specific characteristics of the waste, disposal site, or method of disposal, it finds reasonable assurance of compliance with the performance objectives specified in this administrative regulation.

Section 29. Applicant Qualifications and Assurances. Each applicant shall show that he either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds or, by a combination of the two (2), to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

Section 30. Funding for Disposal Site Closure and Stabilization. (1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds shall be available to carry out disposal site closure and stabilization, including:

(a) Decontamination or dismantlement of land disposal facility structures;

(b) Closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance shall be eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring shall be required; and

(c) Assurances shall be based on cabinet-approved cost estimates reflecting the cabinet-approved plan for disposal site

closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the cabinet may accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of other federal or state agencies or local governing bodies for the decontamination, closure, and stabilization. If the cabinet accepts these arrangements they shall be adequate to satisfy these requirements and that the portion of the surety that covers the closure of the disposal site that shall be clearly identified and committed for use in accomplishing these activities.

(3) The licensee's surety mechanism shall be submitted annually for review by the cabinet to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(4) The amount of surety liability shall change in accordance with the predicted cost of future closure and stabilization. Factors affecting closure and stabilization cost estimates include:

(a) Inflation;

(b) Increases in the amount of disturbed land;

(c) Changes in engineering plans;

(d) Closure and stabilization that has already been accomplished; and

(e) Other conditions affecting costs. This shall yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.

(5)(a) The term of the surety mechanism shall be open unless it can be demonstrated that another arrangement would provide an equivalent level of assurance.

1. This assurance shall be provided with a surety mechanism written for a specified period of time (for example, five (5) years) yet which shall be automatically renewed unless the party who issues the surety notifies the cabinet and the beneficiary (the site owner) and the principal (the licensee) not less than ninety (90) days prior to the renewal date of the intention not to renew.

2. In this situation the licensee shall submit a replacement surety within thirty (30) days after notification of cancellation.

(b) If the licensee fails to provide a replacement surety acceptable to the cabinet, the site owner may collect on the original surety.

(6)(a) Proof of forfeiture shall not be necessary to collect the surety so that if the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration.

(b) The conditions described in this section shall be clearly stated on a surety instrument that is not open-ended, and shall be agreed to by all parties. Liability under the surety mechanism shall remain in effect until the closure and stabilization program has been completed and approved by the cabinet and the license has been transferred to the site owner.

(7)(a) Financial surety arrangements acceptable to the cabinet include:

1. Surety bonds;

2. Cash deposits;

3. Certificates of deposit;

4. Deposits of government securities;

5. Escrow accounts;

6. Irrevocable letters or lines of credit;

7. Trust funds; and

8. Combinations of the above.

(b) Self-insurance, or an arrangement that essentially constitutes pledging the assets of the licensee, shall not satisfy the surety requirement for private sector applicants because this does not provide additional assurance other than that which already exists through license requirements.

Section 31. Financial Assurances for Institutional Controls. (1) Prior to the issuance of the license, the applicant shall provide for cabinet review and approval or denial a copy of a binding arrangement, such as a lease, between the applicant and the



disposal site owner that ensures that sufficient funds shall be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed periodically by the cabinet to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in subsection (1) of this section relevant to institutional control shall be submitted to the cabinet for approval or denial.

#### Section 32. Maintenance of Records, Reports, and Transfers.

(1) Each licensee shall maintain records and make reports in connection with the licensed activities as required by the conditions of the license or by 902 KAR Chapter 100 or orders of the cabinet.

(2)(a) A record required by 902 KAR Chapter 100 or by license conditions shall be maintained for a period specified by the appropriate administrative regulation in 902 KAR Chapter 100 or by license condition.

(b) If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in subsection (5) of this section as a condition of license termination unless the cabinet otherwise authorizes disposition.

(3)(a) A record that shall be maintained as required by this section shall be the original, a reproduced copy, or microform if this reproduced copy or microform is capable of producing copy that is clear and legible at the end of the required retention period.

(b)1. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the retention period.

2. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures.

(c) The licensee shall maintain adequate safeguards against tampering with and loss of records.

(4) If there is a conflict between the cabinet's administrative regulations, license condition, or other written cabinet approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified shall take precedence.

(5) In addition to the requirements of subsections (1) through (4) of this section, copies of records of the location and the quantity of radioactive wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the Governor of the Commonwealth of Kentucky, other Kentucky local agencies, and federal governmental agencies as designated by the cabinet when the license is terminated.

(6) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record:

(a) The date that the shipment is received at the disposal facility;

(b) The date of disposal of the waste;

(c) A traceable shipment manifest number;

(d) A description of any engineered barrier or structural overpack provided for disposal of the waste;

(e) The location in the disposal site;

(f) The condition of the waste packages as received;

(g) Any discrepancies between materials listed on the manifest and those received;

(h) The volume of pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials; and

(i) Any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and 902 KAR Chapter 100.

(7) The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the cabinet as a license condition.

(8) The licensee shall retain these records until the cabinet transfers or terminates the license that authorizes the activities established in this section.

(9) Each licensee authorized to dispose of radioactive waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the cabinet in order

to update the information base for determining financial qualifications.

(10)(a) Each licensee authorized to dispose of waste materials received from other persons, authorized by this administrative regulation, shall submit an annual report to the cabinet. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

1. Specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;

2. The results of the environmental monitoring program;

3. A summary of licensee disposal unit survey and maintenance activities;

4. A summary, by waste class, of activities and quantities of radionuclides disposed of;

5. Instances in which observed site characteristics were significantly different from those described in the application for a license; and

6. Other information the cabinet may require to protect public health and safety.

(c) The report shall specifically cover instances in which the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action.

(11)(a) In addition to the other requirements of this section, the licensee shall store or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(b) The manifest information that shall be stored electronically is:

1. That required in 902 KAR 100:021, Sections 9 and 10, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

2. The information required in subsection (6) of this section.

(c) As specified in license conditions, the licensee shall report the stored information, or subsets of the information, on a computer-readable medium.

Section 33. Tests at Land Disposal Facilities. Each licensee shall perform, or allow the cabinet to perform, any tests appropriate or necessary for the administration of this administrative regulation, including, in part, tests of:

(1) Radioactive wastes and facilities used for the receipt, storage, treatment, handling, or disposal of radioactive wastes;

(2) Radiation detection and monitoring instruments; and

(3) Other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of radioactive waste.

Section 34. Cabinet Inspections of Land Disposal Facilities. (1) Each licensee shall:

(a) Afford to the cabinet at all reasonable times opportunity to inspect radioactive waste not yet disposed of and the premises, equipment, operations, and facilities in which radioactive wastes are received, possessed, handled, treated, stored, or disposed;

(b) Provide the cabinet with the necessary equipment to meet the activities, such as monitoring, surveying, and recordkeeping as required by this section; and

(c) Make available to the cabinet for inspection, upon notice, records kept by it as required by this administrative regulation.

(2) Authorized representatives of the cabinet may copy and take away copies of any record required to be kept by this administrative regulation.]

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, November 13, 2018)**

**902 KAR 100:052. Specific domestic licenses of broad scope for byproduct material[licenses].**

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. Part 33, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services[Human Resources] is authorized by KRS 211.844(1) to promulgate administrative regulations~~[provide by administrative regulation]~~ for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation prescribes requirements for the issuance of specific licenses of broad scope for byproduct[radioactive] material.

Section 1. Definitions. (1) "Agreement state" means a state with which~~[that]~~ the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state.

Section 2. Applicability. This administrative regulation establishes requirements for specific licensees to possess, use, or transfer byproduct[radioactive] material for licenses of broad scope. Except as established in subsections (1) through (3) of this section, the licensee shall comply with 10 C.F.R. Part 33. (1) The licensee shall not be subject to:

(a) 10 C.F.R. 33.8;

(b) 10 C.F.R. 33.21; or

(c) 10 C.F.R. 33.23.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) The "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch" shall be used ~~instead~~[in lieu] of federal references to the "Commission" and the "NRC." [Section 2. Types of Specific Licenses of Broad Scope. (1) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(2) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a chemical or physical form of radioactive material specified in 902 KAR 100:090, relating to broad license quantities, for any authorized purpose. The possession limit for a Type B broad license, if only one (1) radionuclide is possessed, is the quantity specified for that radionuclide in Column I of the table in Section 2 of 902 KAR 100:090. If two (2) or more radionuclides are possessed, the possession limit for each is determined as follows: for each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Column I of the table in Section 2 of 902 KAR 100:090 for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.

(3) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of a chemical or physical form of radioactive material specified in 902 KAR 100:090, relating to broad licensed quantities, for any authorized purpose. The possession limit for a Type C broad license, if only one (1) radionuclide is possessed, is the quantity specified for that radionuclide in Column II of the table in Section 2 of 902 KAR 100:090. If two (2) or more radionuclides are possessed, the possession limit is determined for each as follows: for each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in Column II of the table in Section 2 of 902 KAR 100:090 for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.

Section 3. Requirements for the Issuance of a Type A Specific License of Broad Scope. An application for a Type A specific license of broad scope will be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(3) The applicant has established administrative controls and requirements relating to organization, management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(a) The establishment of a radiation safety committee composed of persons, such as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive materials;

(b) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection, who is available for advice and assistance on radiological safety matters; and

(c) The establishment of appropriate administrative procedures to assure control of procurement and use of radioactive material; completion of safety evaluation of proposed uses of radioactive material which take into consideration matters, such as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with this subsection prior to use of the radioactive material.

Section 4. Requirements for the Issuance of a Type B Specific License of Broad Scope. An application for a Type B specific license of broad scope will be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040; and

(2) The applicant has established administrative controls and provisions relating to organization, management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(a) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection, who is available for advice and assistance on radiological safety matters; and

(b) The establishment of appropriate administrative procedures to assure control of procurement and use of radioactive material; completion of safety evaluations or proposed uses of radioactive materials which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, the operating or handling procedures; and review, approval and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with this subsection prior to use of the radioactive material.

Section 5. Requirements for the Issuance of a Type C Specific License of Broad Scope. An application for a Type C specific license of broad scope shall be approved if:

(1) The applicant satisfies the general requirements specified in 902 KAR 100:040;

(2) The applicant submits a statement that radioactive material

will be used only by, or under the direct supervision of, individuals who have received:

(a) A college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering;

(b) At least forty (40) hours of training and experience in the safe handling of radioactive materials, characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(3) The applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

Section 6. Prohibited Acts and Conditions for Specific Licenses of Broad Scope. (1) Unless otherwise specifically authorized by these administrative regulations, persons licensed under this administrative regulation shall not:

(a) Conduct tracer studies in the environment involving direct release of radioactive material;

(b) Receive, acquire, own, possess, use, or transfer, devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of materials;

(c) Conduct activities for which a specific license issued by the cabinet under 902 KAR 100:051 or 902 KAR 100:058 is required; or

(d) Add or cause the addition of radioactive material to a food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being.

(2) Each Type A specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(3) Each Type B specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(4) Each Type C specific license of broad scope issued under this administrative regulation shall be subject to the condition that radioactive material possessed under this license may only be used by, or under the direct supervision of, individuals who satisfy the requirements of Section 5 of this administrative regulation.]

JEFFREY D. HOWARD, Jr., M.D., Commissioner

ADAM MEIER, Secretary

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## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(As Amended at ARRS, November 13, 2018)

### 902 KAR 100:070. Packaging and transportation [Transportation] of radioactive material.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 71, 73.2, 73.37, 49 C.F.R. 173.403, 42 U.S.C. 2011[39 C.F.R. 111.1, 49 C.F.R. 107, 170-189]

STATUTORY AUTHORITY: KRS[43B.170,] 194A.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 194A.050(1) requires the secretary to promulgate 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 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations[regulation] for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements for packaging and transportation of radioactive material.

Section 1. Definitions. (1) "Agreement state" means a state with which[that] the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Armed escort" is defined by 10 C.F.R. 73.2.

(3) "Cabinet" is defined by KRS 194A.005(1).

(4) "Highway route controlled quantity" is defined by 49 C.F.R. 173.403.

(5) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state[Applicability. Applies to a licensee authorized by a specific or general license issued by the cabinet to receive, possess, use, or transfer radioactive material, when: (a) The licensee delivers that material to a carrier for transport;

(b) Transports the material outside the site of usage as specified in the cabinet license; or

(c) Transports the material on public highways.

(2) This administrative regulation shall not authorize the possession of radioactive material].

Section 2. Applicability. This administration regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 71 except as established in subsections (1) through (3) of this section.

(1) The licensee shall not be subject to the following:

(a) 10 C.F.R. 71.2;

(b) 10 C.F.R. 71.6;

(c) 10 C.F.R. 71.11;

(d) 10 C.F.R. 71.14(b);

(e) 10 C.F.R. 71.19;

(f) 10 C.F.R. 71.31;

(g) 10 C.F.R. 71.33;

(h) 10 C.F.R. 71.35;

(i) 10 C.F.R. 71.37;

(j) 10 C.F.R. 71.38;

(k) 10 C.F.R. 71.39;

(l) 10 C.F.R. 71.41;

(m) 10 C.F.R. 71.43;

(n) 10 C.F.R. 71.45;

(o) 10 C.F.R. 71.51;

(p) 10 C.F.R. 71.55;

(q) 10 C.F.R. 71.59;

(r) 10 C.F.R. 71.61;

(s) 10 C.F.R. 71.63;

(t) 10 C.F.R. 71.64;

(u) 10 C.F.R. 71.65;

(v) 10 C.F.R. 71.70;

(w) 10 C.F.R. 71.71;

(x) 10 C.F.R. 71.73;

(y) 10 C.F.R. 71.74;

(z) 10 C.F.R. 71.75;

(aa) 10 C.F.R. 71.77;

(bb) 10 C.F.R. 71.85 (a)-(c);

(cc) 10 C.F.R. 71.91(b);

(dd) 10 C.F.R. 71.101(c)(2), (d) and (e); or

(ee) 10 C.F.R. 71.107-125.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100.040.

(3) Reference to the "Commission", ~~or~~ "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the NRC, or an agreement state except as established in the following:

(a) 10 C.F.R. 71.17; and

(b) 10 C.F.R. 71.88.

(4) Reference to the Commission, NRC, Nuclear Regulatory Commission, United States Nuclear Regulatory Commission, or Administrator of the appropriate Regional Office in 10 C.F.R. Part 71 shall be deemed to be reference to the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, except when used in the following:

(a) 10 C.F.R. 71.5(b);

(b) 10 C.F.R. 71.10;

(c) 10 C.F.R. 71.17(c)(3) and (e);

(d) 10 C.F.R. 71.85(c);

(e) 10 C.F.R. 71.88(a)(4);

(f) 10 C.F.R. 71.93(c);

(g) 10 C.F.R. 71.95; and

(h) 10 C.F.R. 71.97(c)(3)(iii) and (f) [Requirement for a License. A person shall not deliver radioactive material to a carrier for transport, or transport radioactive material, unless:

(1) Authorized in a general or specific license issued by the cabinet; or

(2) Exempted pursuant to Section 3 of this administrative regulation].

### Section 3. Transport of Highway Route Controlled Quantities.

(1) Advanced notification shall be provided in accordance with 10 C.F.R. 71.97 prior to the transport, or delivery to a carrier for transport, of highway route controlled quantities.

(2) All licensees of the cabinet, NRC, or another Agreement state shall arrange for armed escort when transporting materials through the Commonwealth.

(3) Armed escort may be provided by either the Kentucky State Police (KSP) or private security firm meeting the requirements of 10 C.F.R. 73.37.

(4) The cabinet may require advanced notice of and armed escort for other quantities of radioactive materials for the protection of public health and safety.

(5) Payment for escort provided by KSP shall be made in accordance with 902 KAR 100.012, Section 4. [Exemptions. (1) A licensee is exempt from all the requirements of this administrative regulation with respect to shipment or carriage of the following low-level materials:

(a) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, if the activity concentration of the material does not exceed ten (10) times the values specified in 10 C.F.R. 71, Appendix A; and

(b) Materials for which the activity concentration is not greater than the activity concentration values, or for which the consignment activity is not greater than the limit for an exempt consignment found in 10 C.F.R. 71, Appendix A.

(2) A physician licensed by the Commonwealth to dispense drugs in the practice of medicine shall be exempt from Section 4 of this administrative regulation with respect to transport by the physician of radioactive material for use in the practice of medicine. However, a physician operating under this exemption shall be licensed pursuant to 902 KAR 100.072 or equivalent regulations of the NRC or an agreement state.]

### Section 4. Notice to Employees. The KR-441 "Notice to Employees" shall be posted instead of the NRC Form 3 as specified in 10 C.F.R. Part 71.

(1) Each licensee who transports licensed material outside of the confines of his plant or other place of use specified in the cabinet license, or if transport is on a public highway, or who

delivers licensed material to a carrier for transport, shall:

(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 C.F.R. 107, 171 through 180, and 390 through 397; and

(b) Assure that special instructions needed to open the package safely are sent to, or have been made available to, the consignee for the consignee's use in accordance with 902 KAR 100.019, Section 28(5).

(2) If the regulations of the U.S. Department of Transportation (DOT) are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the Department of Transportation regulations, specified in subsection (1)(a) of this section, to the same extent as if the shipment was subject to the DOT regulations.]

### Section 5. Incorporation by Reference. (1) KR-441 "Notice to Employees" 9/18, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. [General Licenses for Carriers. (1) A general license shall be issued to a common or contract carrier, not exempt under Section 3 of this administrative regulation, to receive, possess, transport, and store radioactive material in the regular course of carriage for another, or storage incident to the transportation and storage, if the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(2) A general license shall be issued to a private carrier to transport radioactive material, if the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation relating to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(3) The notification of incidents referred to in the U.S. Department of Transportation requirements identified in subsection (1) of this section shall be filed with, or made to, the cabinet.

(4) A person authorized by a general license described in this section, who transports radioactive material, is exempt from the requirements of 902 KAR 100.019 and 902 KAR 100.165.

Section 6. General License: NRC Approved Packages. (1) A general license shall be issued to a licensee of the cabinet to transport or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the NRC as satisfying the provisions of 10 C.F.R. 71.101 through 137;

(b) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(c) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137; and

(d) Submits in writing to Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, using an appropriate method listed in 10 C.F.R. 71.1(a), before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval.

(3) The general license identified in subsection (1) of this section shall apply only if the package approval authorizes use of

the package under the general license.

(4) For a Type B or fissile material package, the design of which was approved by the NRC before April 1, 1996, the general license shall be subject to additional restrictions contained in Section 7 of this administrative regulation.

Section 7. Previously Approved Type B Packages. (1) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following limitations:

(a) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by its model number, in accordance with NRC regulations;

(b) The package shall not be used for a shipment to a location outside the United States after August 31, 1986, except under multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and

(2) A serial number that uniquely identifies each package that conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each package.

(3) A Type B(U) package, a Type B(M) package, an LSA material package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC Certificate of Compliance, may be used under the general license of Section 6 of this administrative regulation, with the following conditions:

(a) Fabrication of the package shall have been satisfactorily completed by April 1, 1999, as demonstrated by its model number, in accordance with NRC regulations, 10 C.F.R. 71;

(b) A package used for shipment to a location outside the United States shall be subject to multilateral approval by the U.S. Department of Transportation, as defined in 49 C.F.R. 173.403; and

(c) A serial number that uniquely identifies each package that conforms to the approved design shall be assigned to, and legibly and durably marked on the outside of, each package.

Section 8. General License: DOT Specification Container. (1) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material, or for a Type B quantity of radioactive material, as specified in 49 C.F.R. Parts 173 and 178.

(2) The general license shall apply only to a licensee who:

(a) Has a quality assurance program approved by the cabinet as satisfying the requirements of 10 C.F.R. 71.101 through 71.137;

(b) Has a copy of the specification; and

(c) Complies with the terms and conditions of the specification, and the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(3) The general license shall be subject to the limitation that the specification container shall not be used for a shipment to a location outside the United States except by multilateral approval, as defined in 49 C.F.R. 173.403.

(4) This section expires October 1, 2008.

Section 9. General License: Use of Foreign Approved Package. (1)(a) A general license shall be issued to a licensee of the cabinet to transport, or to deliver to a carrier for transport, licensed material in a package, the design of which has been approved in a foreign national competent authority certificate and revalidated by the U.S. Department of Transportation as meeting the applicable requirements of 49 C.F.R. 171.12.

(b) Except as provided in this section, the general license shall apply only to a licensee who has a quality assurance program approved by the NRC as satisfying the applicable provisions of 10 C.F.R. 71.101 through 71.137.

(2) The general license shall apply only to shipments made to or from locations outside the United States.

(3) The general license shall apply to a licensee who:

(a) Has copies of the applicable certificate, the revalidation, the

drawings, and other documents referenced in the certificate relating to the:

1. Use and maintenance of the packaging; and

2. Actions to be taken prior to shipment; and

(b) Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this administrative regulation and 10 C.F.R. 71.0 through 71.11, 71.81 through 71.100, and 71.101 through 71.137.

(4) With respect to the quality assurance provisions of 10 C.F.R. 71.101 through 71.137, the licensee shall be exempt from design, construction, and fabrication considerations.

Section 10. Preliminary Determinations. Before the first use of a packaging for the shipment of radioactive material:

(1) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that may significantly reduce the effectiveness of the packaging;

(2) If the maximum normal operating pressure will exceed thirty-five (35) kilopascal (five (5) lbf/in<sup>2</sup>) gauge, the licensee shall test the containment system at an internal pressure at least fifty (50) percent higher than the maximum normal operating pressure to verify the capability of that system to maintain its structural integrity at that pressure; and

(3) The licensee shall mark the packaging, conspicuously and durably, with its model number, serial number, gross weight, and a package identification number assigned by the NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

Section 11. Routine Determinations. Before making a shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this administrative regulation and of the license. The licensee shall determine that:

(1) The package is proper for the contents to be shipped;

(2) The package is in unimpaired physical condition except for superficial defects, such as marks or dents;

(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(4) A system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) A pressure relief device is operable and set in accordance with written procedures;

(6) The package has been loaded and closed in accordance with written procedures;

(7) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(8) A structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified by 10 C.F.R. 71.45;

(9) The level of nonfixed, or removable, radioactive contamination on the external surfaces of each package offered for shipment is ALARA, and within the limits specified by the U.S. Department of Transportation in 49 C.F.R. 173.443;

(10) External radiation levels around the package and around the vehicle, if applicable, shall not exceed the limits specified in 49 C.F.R. 71.47 during transportation.

(11) Accessible package surface temperatures shall not exceed the limits specified in 10 C.F.R. 71.43(g) at any time during transportation.

Section 12. Air Transport of Plutonium. In addition to the requirements of a general license and exemptions stated in this administrative regulation or included by citation of U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(1) The plutonium is contained in a medical device designed



for individual human application;

(2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in 10 C.F.R. 71, Appendix A and in which the radioactivity is essentially uniformly distributed;

(3) The plutonium is shipped in a single package containing no more than an  $A_2$  quantity of plutonium in an isotope or form and is shipped in accordance with Section 4 of this administrative regulation;

(4) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC; or

(5) For a shipment of plutonium by air which is subject to subsection (4) of this section, the licensee shall, through special arrangement with the carrier, require compliance with 49 C.F.R. 175.704, applicable to the air transport of plutonium;

(6) Nothing in this section shall be interpreted as removing or diminishing the requirements of 10 C.F.R. 73.24.

Section 13. Advance Notification of Transport of Irradiated Reactor Fuel and Nuclear Waste. (1)(a) Before the transport of nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or before the delivery of nuclear waste to a carrier for transport, a licensee shall provide advance notification of the transport to the governor, or governor's designee, of each state through which the waste will be transported.

(b) Advance notification shall be required for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements in 10 C.F.R. 73.37(f).

(2) Advance notification shall also be required for licensed material, other than irradiated fuel, if:

(a) The nuclear waste is required to be in Type B packaging for transportation;

(b) The nuclear waste is being transported to, through, or across a state boundary to a disposal site, or to a collection point for transport to a disposal site; and

(c) The quantity of licensed material in a single package exceeds the least of the following:

1. 3,000 times the  $A_1$  value of the radionuclides as specified in 10 C.F.R. 71, Appendix A for special form radioactive material;

2. 3,000 times the  $A_2$  value of the radionuclides as specified in 10 C.F.R. 71 Appendix A for normal form radioactive material; or

3. 27,000 curies (1000 TBq).

(3) Each advance notification shall be in writing and contain the following information:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;

(b) A description of the nuclear waste contained in the shipment as required by 49 C.F.R. 172.202 and 172.203(d);

(c) The point of origin of the shipment and the seven (7) day period during which departure of the shipment is estimated to occur;

(d) The seven (7) day period during which arrival of the shipment at state boundaries is estimated to occur;

(e) The destination of the shipment, and the seven (7) day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact with a telephone number for current shipment information.

(4) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the cabinet.

(a) A notification delivered by mail shall be postmarked at least seven (7) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur.

(b) A notification delivered by messenger shall reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the seven (7) day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three (3) years.

(5) The licensee who finds that schedule information previously furnished will not be met, shall telephone a responsible individual in the office of the governor, or governor's designee, and the

cabinet and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain for three (3) years a record of the name of the individual contacted.

(6) A licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the cabinet. The licensee shall state in the notice that it is a cancellation and shall identify the advance notification that is being cancelled. A copy of the notice shall be retained by the licensee for three (3) years.

Section 14. Exemption from Classification as Fissile Material. Fissile material meeting the requirements of at least one (1) of the subsections (1) through (6) of this section are exempt from classification as fissile material and from the fissile material package standards of 10 C.F.R. 71.55 and 71.59, but are subject to all other requirements of this administrative regulation, except as noted. (1) Individual package containing two (2) grams or less fissile material;

(2) Individual or bulk packaging containing fifteen (15) grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material;

(3)(a) Low concentrations of solid fissile material commingled with solid nonfissile material, if:

1. There is at least 2,000 grams of solid nonfissile material for every gram of fissile material; and

2. There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.

(b) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass of solid nonfissile material.

(4) Uranium-enriched in uranium-235 to a maximum of one (1) percent by weight, and with total plutonium and uranium content of up to one (1) percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than five (5) percent of the uranium mass;

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two (2) percent by mass, with a total plutonium and uranium-233 content not exceeding two one-thousandths (0.002) percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of two (2). The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1,000 grams, of which not more than twenty (20) percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

Section 15. General License: Fissile Material (1) A general license is issued to any licensee of the cabinet to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section of this administration regulation. The fissile material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71.101 through 71.137.

(3) The general license shall apply only when a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(4) The general license shall apply only to packages containing

fissile material that are labeled with a Criticality Safety Index (CSI) that:

(a) Has been determined in accordance with subsection (5) of this section;

(b) Has a value less than or equal to ten (10); and

(c) For a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance, and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$CSI = 10 \left( \frac{\text{grams of U-235}}{X} + \frac{\text{grams of U-233}}{Y} + \frac{\text{grams of Pu}}{Z} \right)$$

(b) The calculated CSI shall be rounded up to the first decimal place;

(c) The values of X, Y, and Z used in the CSI equation shall be taken from 10 C.F.R. Tables 71-1 or 71-2, as appropriate;

(d) If 10 C.F.R. Table 71-2 is used to obtain the value of X, then the values of the terms in the equation for uranium-233 and plutonium shall be assumed to be zero (0); and

(e) 10 C.F.R. Table 71-1 values for X, Y, and Z shall be used to determine the CSI if:

1. Uranium-233 is present in the package;

2. The mass of plutonium exceeds one (1) percent of the mass of uranium-235;

3. The uranium is of unknown uranium-235 enrichment or greater than twenty-four (24) percent enrichment; or

4. Substances having a moderating effectiveness (an average hydrogen density greater than water), such as certain hydrocarbons oils or plastics, are present in any form, except as polyethylene used for packaging or wrapping.

Section 16. General License: Plutonium-beryllium Special Form Material. (1) A general license is issued to any licensee of the cabinet to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section of this administrative regulation. This material need not be contained in a package which meets the standards of 10 C.F.R. 71.41 through 71.65 and 71.71 through 71.77, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of 49 C.F.R. 173.417(a).

(2) The general license shall apply only to a licensee who has a quality assurance program approved by the U.S. Nuclear Regulatory Commission as satisfying the provisions of 10 C.F.R. 71 Subpart H.

(3) The general licensee applies only if a package's contents:

(a) Contain less than a Type A quantity of radioactive material; and

(b) Contain less than 1,000 grams of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 grams of the total quantity of plutonium in the package.

(4) The general license applies only to packages labeled with a CSI that:

(a) Have been determined in accordance with subsection (5) of this section;

(b) Have a value less than or equal to 100; and

(c) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to fifty (50), for shipment on a nonexclusive use conveyance and less than or equal to 100, for shipment on an exclusive use conveyance.

(5)(a) The value for the CSI shall be greater than or equal to the number calculated by the following equation:

$$\frac{\text{grams of Pu-239} + \text{grams of Pu-241}}{24}$$

CSI = 10 and:

(b) The calculated CSI shall be rounded up to the first decimal place.

Section 17. External Radiation Standards for all Packages. (1) Except as provided in subsection (2) of this section, a package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level shall not exceed 200 millirem/hour (mrem/h) (2 millisieverts/h) (2 mSv/h) at any point on the external surface of the package, and the transport index shall not exceed ten (10).

(2) A package that exceeds the radiation level limits specified in subsection (1) of this section shall be transported by exclusive use shipment only, and the radiation levels for the shipment shall not exceed the following during transportation:

(a) 200 mrem/h (2 mSv/h) on the external surface of the package, unless the following conditions are met, in which case the limit is 1,000 mrem/h (10 mSv/h);

1. The shipment is made in a closed transport vehicle;

2. The package is secured within the vehicle so that its position remains fixed during transportation; and

3. There are no loading or unloading operations between the beginning and end of the transportation;

(b) 200 mrem/h (2 mSv/h) at any point on the outer surface of the vehicle, including the top and underside of the vehicle, or in case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(c) 1. Ten (10) mrem/h (0.1 mSv/h) at any point eighty (80) inches (2 meters) from the outer lateral surface of the vehicle, excluding the top and underside of the vehicle; or

2. In the case of a flat-bed style vehicle, at any point six and six-tenths (6.6) feet (2 meters) from the vertical planes projected by the outer edges of the vehicle, excluding the top and underside of vehicle; and

(d) Two (2) mrem/h (0.02 mSv/h) in any normally occupied space, except that this provision shall not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices as required by 902 KAR 100:019, Section 13.

(3) For shipments made under the provisions of subsection (2) of this section, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.

(4) The written instructions required for exclusive use shipments shall be sufficient so that, if followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposure to transport workers or members of the general public.

Section 18. Assumption as to Unknown Properties. If the isotopic abundance, mass, concentration, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

Section 19. Opening Instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 902 KAR 100:019, Section 28(5).

Section 20. Quality Assurance Requirements. (1) The requirements in Sections 20 through 28 shall apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging important to safety. As used in this administrative regulation, quality assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(2) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(3) The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging.

(4) A licensee is responsible for the quality assurance provision that applies to its use of a packaging for the shipment of licensed material subject to this administrative regulation.

(5) A licensee, certificate holder, and applicant for a CoC shall:

(a) Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of 10 C.F.R. 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

(b) Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(6) A licensee shall, before the use of a package for the shipment of licensed material subject to this administrative regulation, obtain U.S. Nuclear Regulatory Commission approval of its quality assurance program. Using an appropriate method listed in 10 C.F.R. 71.1(a), a licensee shall file a description of its quality assurance program, including a discussion of which requirements of this administrative regulation are applicable and how they will be satisfied, by submitting the description to: Attention: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

(7) A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of 902 KAR 100:100, Section 9(3) shall satisfy the requirements of Section 6(2)(a) and subsection (5) of this section.

Section 21. Quality Assurance Organization. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities shall include performing the functions associated with attaining quality objectives and the quality assurance functions:

(2) The quality assurance functions shall:

(a) Assure an appropriate quality assurance program is established and effectively executed; and

(b) Verify, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(3) The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to:

(a) Identify quality problems;

(b) Initiate, recommend, or provide solutions; and

(c) Verify implementation of solutions.

(4) While the term "licensee" is used, the requirements in this section shall be applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued.

Section 22. Quality Assurance Program. (1) The licensee, certificate holder, and applicant for a Certificate of Compliance (CoC) shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of 10 C.F.R. 71.101 through 71.137. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate

holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions shall include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following conditions concerning the complexity and proposed use of the package and its components:

(a) The impact of malfunction or failure of the item to safety;

(b) The design and fabrication complexity or uniqueness of the item;

(c) The need for special controls and surveillance over processes and equipment;

(d) The degree to which functional compliance can be demonstrated by inspection or test; and

(e) The quality history and degree of standardization of the item.

(4) The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary, to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

Section 23. Handling, Storage, and Shipping Control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. If necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels shall be specified and provided.

Section 24. Inspection, Test and Operating Status. (1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent by-passing of the inspections and tests.

(2) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

Section 25. Nonconforming Materials, Parts, or Components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation,

segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

~~Section 26. Corrective Action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. If a significant condition adverse to quality exists, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.~~

~~Section 27. Quality Assurance Records. (1) The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records shall include the instructions, procedures, and drawings required by 10 C.F.R. 71.111 to prescribe quality assurance activities and shall include closely related specifications such as required qualifications of personnel, procedures, and equipment.~~

~~(2) The records shall include the instructions or procedures that establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.~~

~~(3) The licensee, certificate holder, and applicant for a CoC shall retain these records for three (3) years beyond the date when the licensee, certificate holder, applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for CoC shall retain the superseded material for three (3) years after it is superseded.~~

~~Section 28. Audits. (1) The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program.~~

~~(2) The audits shall be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited.~~

~~(3) Audited records shall be documented and reviewed by management having responsibility in the area audited.~~

~~(4) Follow-up action, including reaudit of deficient areas, shall be taken as indicated.~~

~~Section 29. Determination of A<sub>1</sub> and A<sub>2</sub>. Values of A<sub>1</sub> and A<sub>2</sub> shall be determined as described in 10 C.F.R. 71 Appendix A.]~~

JEFFREY D. HOWARD, JR., M.D., Commissioner  
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Public Health  
Division of Public Health Protection and Safety  
(As Amended at ARRS, November 13, 2018)**

**902 KAR 100:072. Medical use of byproduct material[Use of radionuclides in the health arts].**

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. Part 35, 45 C.F.R. Part 46, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1)[, 10 C.F.R. 35]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes requirements and provisions for the use of byproduct[radioactive] material in the healing arts, for issuance of licenses authorizing the medical use of byproduct[radioactive] material and for specific licensees to possess, use, and transfer byproduct[radioactive] material for medical uses.

Section 1. Definitions. (1) "Agreement state" means a state with which[that] the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state.

Section 2. Applicability. This administrative regulation establishes requirements for the medical use of byproduct material and for issuance of specific licensees authorizing the use of this material[to possess, use or transfer radioactive material for licenses of broad scope]. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 35. (1) The licensee shall not be subject to:

(a) 10 C.F.R. 35.8;

(b) 10 C.F.R. 35.11(c)(1);

(c) 10 C.F.R. 35.13(a)(1);

(d) 10 C.F.R. 35.4001; or

(e) 10 C.F.R. 35.4002.

(2) Application for specific license. Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the ["Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state." shall be used in lieu of federal references to the "Commission" and the "NRC."]

(4) Notifications and reports required by 10 C.F.R. 35.14, 35.3045, 35.3047, and 35.3067 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.[Implementation. (1) A licensee shall implement the provisions in this administrative regulation on or before October 24, 2005, with the exception of the requirements listed in subsection (2) of this section.

(2) A licensee shall implement the training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation on or before October 25, 2007.

(3) Prior to October 25, 2007, a licensee shall satisfy the training requirements of this administrative regulation for a radiation safety officer, an authorized medical physicist, an authorized nuclear pharmacist, or an authorized user by complying with either:

(a) The appropriate training requirements in Sections 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 of this administrative regulation; or

(b) The appropriate training requirements in Section 78 of this

administrative regulation.

(4) If a license condition exempted a licensee from a provision of this administrative regulation on October 24, 2005, then the license condition continues to exempt the licensee from the provision of 902 KAR 100.072.

(5) If a requirement in this administrative regulation differs from the requirement in an existing license condition, the requirement in this administrative regulation shall govern.

(6) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Sections 49, 55, 56, and 57 of this administrative regulation until there is a license amendment or renewal that modifies the license condition.

Section 2. License Required. (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, or as allowed in subsection (2)(a) or (b) of this section.

(2) A specific license is not required for an individual who:

(a) Receives, possesses, uses, or transfers radioactive material in accordance with the administrative regulations in this chapter under the supervision of an authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition; or

(b) Prepares unsealed radioactive material for medical use in accordance with the administrative regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Section 12 of this administrative regulation unless prohibited by license condition.

Section 3. Maintenance of Records. Each record required by this administrative regulation shall be legible throughout the retention period specified by each section. The record shall be the original or a reproduced copy or a microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Section 4. Application for License, Amendment, or Renewal.

(1) An application shall be signed by the applicant's or licensee's management.

(2) An application for a license for medical use of radioactive material as described in Sections 30, 31, 33, 37, 45, 46 and 62 of this administrative regulation and shall be made by:

(a) Filing an original and one (1) copy of Form RPS-7, Application for Radioactive Material License, that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, authorized user, authorized medical physicist, and authorized nuclear pharmacist; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57, of this administrative regulation as applicable.

(3) A request for a license amendment or renewal shall be made by:

(a) Submitting an original and one (1) copy of either:

1. Form RPS-7, Application for Radioactive Material License;

or

2. A letter requesting the amendment or renewal; and

(b) Submitting procedures required by Sections 49, 55, 56, and 57 of this administrative regulation as applicable.

(4) In addition to the requirements in subsections (2) and (3) of this section, an application for a license or amendment for medical use of radioactive material as described in Section 62 of this administrative regulation shall also include information regarding any radiation safety aspects of the medical use of the material that

is unique to the evolving technology.

(a) The applicant shall also provide specific information on:

1. Radiation safety precautions and instructions;

2. Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

3. Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety.

(b) The applicant or licensee shall provide information requested by the cabinet as necessary to complete its review of the application.

(5) An applicant that satisfies the requirements specified in 902 KAR 100.052 of this chapter may apply for a Type A specific license of broad scope.

Section 5. License Amendments. A licensee shall apply for and receive a license amendment:

(1) Before the licensee receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;

(2) Before the licensee permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license, except:

(a) For an authorized user, an individual who meets the requirements in Sections 63, 68(1), 69(1), 70(1), 71(1), 72(1), 74(1), 76(1), 77(1), 78(2)(a), 78(3)(a), 78(4)(a), 78(7)(a), 78(9)(a), and 78(10)(a) of this administrative regulation;

(b) For an authorized nuclear pharmacist, an individual who meets the requirements in Sections 63 and 66(1) or 78(12)(a);

(c) For an authorized medical physicist, an individual who meets the requirements in Sections 63 and 65(1) or 78(11)(a) or (b) of this administrative regulation;

(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, or authorized medical physicist:

1. On a cabinet, an agreement state, or U.S. Nuclear Regulatory Commission license or other equivalent permit or license recognized by the cabinet that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy;

2. On a permit issued by the cabinet, an agreement state, or U.S. Nuclear Regulatory Commission specific license of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy;

3. On a permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

4. By a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists.

(3) Before it changes radiation safety officers, except as provided in Section 10(3) of this administrative regulation;

(4) Before it receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;

(5) Before it adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either Section 30 or 31 of this administrative regulation;

(6) Before it changes the address of use identified in the application or on the license; or

(7) Before it revises procedures required by Sections 49, 55, 56 and 57 of this administrative regulation as applicable, where the revision reduces radiation safety; and

(8) Before conducting research involving human research subjects using radioactive material.

Section 6. Notifications. (1) A licensee shall provide the cabinet a copy of the board certification, the cabinet, U.S. Nuclear Regulatory Commission or agreement state license, the permit issued by a U.S. Nuclear Regulatory Commission master material licensee, the permit issued by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee of broad scope, or the permit issued by a U.S. Nuclear Regulatory



Commission master material license broad scope permittee for each individual no later than thirty (30) days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist under Section 5(2)(a) through (d) of this administrative regulation.

(2) A licensee shall notify the cabinet by letter no later than thirty (30) days after:

(a) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in 902 KAR 100:040, Section 6(2) of this chapter; or

(d) The licensee has added to or changed the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation.

(3) The licensee shall mail the documents required in this section to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621.

Section 7. Exemptions Regarding Type A Specific Licenses of Broad Scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under 902 KAR 100:052 of this chapter, is exempt from:

(1) Section 4(4) of this administrative regulation regarding the need to file an amendment to the license for medical use of radioactive material, as described in Section 62 of this administrative regulation;

(2) The provisions of Section 5(2) of this administrative regulation;

(3) The provisions of Section 5(5) of this administrative regulation regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(4) The provisions of Section 6(1) of this administrative regulation;

(5) The provisions of Section 6(2)(a) of this administrative regulation for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;

(6) The provisions of Section 6(2)(d) of this administrative regulation regarding additions to or changes in the areas of use identified in the application or on the license if radioactive material is used in accordance with either Section 30 or 31 of this administrative regulation; and

(7) The provisions of Section 36(1) of this administrative regulation.

Section 8. License Issuance. (1) The cabinet shall issue a license for the medical use of radioactive material if:

(a) The applicant has filed RPS-7 Application for Radioactive Material License in accordance with the instructions in Section 4 of this administrative regulation;

(b) The applicant has paid any applicable fee as provided in 902 KAR 100:012 of this chapter;

(c) The cabinet finds the applicant equipped and committed to observe the safety standards established by the cabinet in this Chapter for the protection of the public health and safety; and

(d) The applicant meets the requirements of 902 KAR 100:040, 100:041, 100:042, and 100:045 of this chapter.

(2) The cabinet shall issue a license for mobile medical service if the applicant:

(a) Meets the requirements in subsection (1) of this section; and

(b) Assures that individuals or human research subjects to whom unsealed radioactive material or radiation from implants containing radioactive material will be administered may be released following treatment in accordance with Section 27 of this administrative regulation.

Section 9. Specific Exemptions. The cabinet may, as

established in 10 C.F.R. 35.19, upon application of any interested person or upon its own initiative, grant exemptions from the administrative regulations in this chapter that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Section 10. Authority and Responsibilities for the Radiation Protection Program. (1) In addition to the radiation protection program requirements of 902 KAR 100:019 of this administrative regulation, a licensee's management shall approve in writing:

(a) Requests for a license application, renewal, or amendment before submittal to the cabinet;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted in under Section 11 of this administrative regulation.

(2) A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

(3) For up to sixty (60) days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under Sections 63 and 64, of this administrative regulation to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, as provided in subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the cabinet in accordance with Section 6 of this administrative regulation.

(4) A licensee may simultaneously appoint more than one (1) temporary radiation safety officer in accordance with subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.

(5) A licensee shall establish the authority, duties, and responsibilities of the radiation safety officer in writing.

(6) A licensee authorized for two (2) or more different types of uses of radioactive material under Sections 33, 37, and 46 of this administrative regulation or two (2) or more types of units under Section 46 of this administrative regulation shall establish a Radiation Safety Committee to oversee all uses of radioactive material permitted by the license. The committee shall include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer. The committee may include other members the licensee considers appropriate.

(7) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative to:

(a) Identify radiation safety problems;

(b) Initiate, recommend, or provide corrective actions;

(c) Stop unsafe operations; and

(d) Verify implementation of corrective actions.

(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section as follows:

(a) A licensee shall retain a record of actions taken by the licensee's management in accordance with subsection (1) of this section, for five (5) years. The record shall include a summary of the actions taken and a signature of licensee management.

(b) The licensee shall retain a copy of both authority, duties, and responsibilities of the radiation safety officer, as required in subsection (5) of this section, and a signed copy of each radiation safety officer's agreement to be responsible for implementing the radiation safety program, as required in subsection (5) of this section, for the duration of the license. The records shall include the signature of the radiation safety officer and licensee

management.

Section 11. Radiation Protection Program Changes. (1) A licensee may revise its radiation protection program without cabinet approval if:

- (a) The revision does not require a license amendment under Section 5 of this administrative regulation;
- (b) The revision is in compliance with 902 KAR Chapter 100 and the license;
- (c) The revision has been reviewed and approved by the radiation safety officer and licensee management; and
- (d) The affected individuals are instructed on the revised program before the changes are implemented.

(2) A licensee shall retain a record of each radiation protection program change made in accordance with subsection (1) of this section for five (5) years. The record shall include a copy of the old and new procedures, the effective date of the change, and the signature of the licensee management that reviewed and approved the change.

Section 12. Supervision. (1) A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Section 2(2)(a) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the use of radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, administrative regulations of this chapter, and license conditions with respect to the medical use of radioactive material.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Section 2(2)(b) of this administrative regulation shall:

(a) In addition to the requirements in 902 KAR 100:165, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(b) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the administrative regulations of this chapter, and license conditions.

(3) A licensee that permits supervised activities under subsections (1) and (2) of this section is responsible for the acts and omissions of the supervised individual.

Section 13. Written Directives. (1) A written directive shall be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 Megabecquerels (MBq) (Thirty (30) microcuries ( $\mu\text{Ci}$ )), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material.

(a) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive shall be acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record.

(b) A written directive shall be prepared within forty-eight (48) hours of the oral directive.

(2) The written directive shall contain the patient or human research subject's name and the following information:

(a) For any administration of quantities greater than 1.11 MBq (30  $\mu\text{Ci}$ ) of sodium iodide I-131: the dosage;

(b) For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radioactive

drug, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the target coordinate settings per treatment for each anatomically distinct treatment site;

(d) For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;

(e) For high dose rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose; or

(f) For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:

1. Before implantation: treatment site, the radionuclide, and dose; and

2. After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose).

(3) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(a) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented as soon as possible in the patient's record.

(b) A revised written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision.

(4) The licensee shall retain a copy of the written directive as required by this section for three (3) years.

Section 14. Procedures for Administrations Requiring a Written Directive. (1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

(a) The patient's or human research subject's identity is verified before each administration; and

(b) Each administration is in accordance with the written directive.

(2) At a minimum, the procedures required by subsection (1) of this section shall address the following items that are applicable to the licensee's use of radioactive material:

(a) Verifying the identity of the patient or human research subject;

(b) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(c) Checking both manual and computer-generated dose calculations; and

(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by Section 46 or 62 of this administrative regulation.

(3) A licensee shall retain a copy of the procedures required under subsection (1) for the duration of the license.

Section 15. Report and Notification of Medical Events. (1) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:

(a) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin; and

1. The total dose delivered differs from the prescribed dose by twenty (20) percent or more;

2. The total dosage delivered differs from the prescribed dosage by twenty (20) percent or more or falls outside the prescribed dosage range; or

3. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty (50) percent or more.

(b) A dose that exceeds 0.05 Sv (5 rem) effective dose

equivalent, five-tenths (0.5) Sv (50 rem) to an organ or tissue, or five-tenths (0.5) Sv (50 rem) shallow dose equivalent to the skin from any of the following:

1. An administration of a wrong radioactive drug containing radioactive material;
2. An administration of a radioactive drug containing radioactive material by the wrong route of administration;
3. An administration of a dose or dosage to the wrong individual or human research subject;
4. An administration of a dose or dosage delivered by the wrong mode of treatment; or
5. A leaking sealed source.

(c) A dose to the skin or an organ or tissue other than the treatment site that exceeds by five-tenths (0.5) Sv (fifty (50) rem) to an organ or tissue and fifty (50) percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of the medical event. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.

(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of the medical event.

(a) The written report shall include:

1. The licensee's name;
2. The name of the prescribing physician;
3. A brief description of the event;
4. Why the event occurred;
5. The effect, if any, on the individual who received the administration;
6. What actions, if any, have been taken or are planned to prevent recurrence; and
7. Certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(b) The report shall not contain the individual's name or any other information that could lead to identification of the individual.

(5)(a)1. The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than twenty-four (24) hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee shall not be required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within twenty-four (24) hours, the licensee shall notify the individual as soon as possible thereafter.

2. The notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian;

(b) If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested; and

(c) The licensee shall not delay any appropriate medical care for the individual including any necessary remedial care as a result of the medical event, because of any delay in notification.

(6) Aside from the notification requirement, this section shall not affect any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) A licensee shall:

- (a) Annotate a copy of the report provided to the cabinet with

the:

1. Name of the individual who is the subject of the event; and
2. Social Security number or other identification number, if one (1) has been assigned, of the individual who is the subject of the event; and
- (b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

~~Section 16. Report and Notification of a Dose to an Embryo/fetus or a Nursing Child. (1) A licensee shall report any dose to an embryo/fetus that is greater than fifty (50) mSv (five (5) rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.~~

~~(2) A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:~~

~~(a) Is greater than fifty (50) mSv (five (5) rem) total effective dose equivalent; or~~

~~(b) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.~~

~~(3) The licensee shall notify the cabinet by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) of this section. The commercial telephone number of the Cabinet for Health and Family Services, Radiation Health Branch is (502) 564-3700. The twenty-four (24) hour emergency number is (800) 255-2587.~~

~~(4) The licensee shall submit a written report to the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621, within fifteen (15) days after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsections (1) or (2) in this section:~~

~~(a) The written report shall include:~~

- ~~1. The licensee's name;~~
- ~~2. The name of the prescribing physician;~~
- ~~3. A brief description of the event;~~
- ~~4. Why the event occurred;~~
- ~~5. The effect, if any, on the embryo or fetus or the nursing child;~~
- ~~6. What actions, if any, have been taken or are planned to prevent recurrence; and~~
- ~~7. Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.~~

~~(b) The report shall not contain the individual's or child's name or any other information that could lead to identification of the individual or child.~~

~~(5)(a)1. The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than twenty-four (24) hours after discovery of an event that would require reporting under subsection (1) or (2) of this section, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee shall not be required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within twenty-four (24) hours, the licensee shall make the appropriate notifications as soon as possible thereafter.~~

~~2. The notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide this written description if requested; and~~

~~(b) The licensee shall not delay any appropriate medical care for the embryo or fetus or for the nursing child, including any~~

necessary remedial care as a result of the event, because of any delay in notification.

(6) A licensee shall:

(a) Annotate a copy of the report provided to the cabinet with the:

1. Name of the pregnant individual or the nursing child who is the subject of the event; and

2. Social Security number or other identification number, if one (1) has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than fifteen (15) days after the discovery of the event.

Section 17. Provisions for the Protection of Human Research Subjects. (1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on its license.

(2) If the research is conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and

(b) Obtain informed consent, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, from the human research subject.

(3) If the research will not be conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy, the licensee, shall before conducting research, apply for and receive a specific amendment to its cabinet medical use license. The amendment request shall include a written commitment that the licensee shall, before conducting research:

(a) Obtain review and approval of the research from an Institutional Review Board, as defined and described in the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46; and

(b) Obtain "informed consent", as defined and described in the Federal Policy, from the human research subject.

(4) This section shall not relieve the licensees from complying with the other requirements in this administrative regulation.

Section 18. Report of a Leaking Source. A licensee shall file a report within five (5) days if a leak test required by Section 24, of this administrative regulation reveals the presence of 185 Bq (0.005  $\mu$ Ci) or more of removable contamination. The report shall be filed with the Cabinet for Health and Family Services, Radiation Health Branch, Manager, 275 East Main Street, Frankfort, Kentucky 40621. The written report shall include the model number and serial number, if assigned, of the leaking source; the radionuclide and its estimated activity; the results of the test; the date of the test; and the action taken.

Section 19. Quality Control of Diagnostic Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for radionuclide studies. (1) As a minimum, the procedures shall include:

(a) Quality control procedures recommended by equipment manufacturers; or

(b) Procedures submitted by the licensee and approved by the cabinet.

(2) The licensee shall conduct quality control procedures in accordance with written procedures.

Section 20. Possession, Use, and Calibration of Instruments Used to Measure the Activity of Unsealed Radioactive Material. (1) For direct measurements performed in accordance with Section 22, of this administrative regulation a licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.

(2) A licensee shall calibrate the instrumentation required in subsection (1) of this section in accordance with nationally-recognized standards or the manufacturer's instructions.

(3) A licensee shall maintain a record of instrument calibrations, required by this section, for three (3) years. The records shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 21. Calibration of Survey Instruments. (1) A licensee shall calibrate the survey instruments used to show compliance with this administrative regulation and 902 KAR 100:019 before first use, annually, and following a repair that affects the calibration. A licensee shall:

(a) Calibrate all scales with readings up to ten (10) mSv (1,000 mrem) per hour with a radiation source;

(b) Calibrate two (2) separated readings on each scale or decade that will be used to show compliance; and

(c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) A licensee shall not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than twenty (20) percent.

(3) A licensee shall maintain a record of each radiation survey instrument calibrations for three (3) years. The record shall include the model and serial number of the instrument, the date of the calibration, the results of the calibration, and the name of the individual who performed the calibration.

Section 22. Determination of Dosages of Unsealed Radioactive Material for Medical Use. (1) A licensee shall determine and record the activity of each dosage before medical use.

(2) For a unit dosage, this determination shall be made by:

(a) Direct measurement of radioactivity; or

(b) A decay correction, based on the activity or activity concentration determined by:

1. A manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements; or

2. A cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA.

(3) For other than unit dosages, this determination shall be made by:

(a) Direct measurement of radioactivity;

(b) Combination of measurement of radioactivity and mathematical calculations; or

(c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer or preparer licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.

(4) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than twenty (20) percent.

(5) A licensee shall retain a record of the dosage determination, required by this section, for three (3) years. The record shall contain:

(a) The radiopharmaceutical;

(b) The patient's or human research subject's name, or identification number if one (1) has been assigned;

(c) The prescribed dosage, the determined dosage, or a notation that the total activity is less than 1.11 MBq (30  $\mu$ Ci);

(d) The date and time of the dosage determination; and

(e) The name of the individual who determined the dosage.

Section 23. Authorization for Calibration, Transmission, and Reference Sources. Any person authorized by Section 2 of this administrative regulation for medical use of radioactive material

may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use. (1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements.

(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).

(4) Any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 7.4 MBq (200 µCi) or 1000 times the quantities in 902 KAR 100:030.

(5) Technetium-99m in amounts as needed.

Section 24. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.

(2) A licensee in possession of a sealed source shall:

(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) Test the source for leakage at intervals not to exceed six (6) months or at other intervals approved by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state in the Sealed Source and Device Registry.

(3) To satisfy the leak test requirements of this section, the licensee shall measure the sample so that the leak test can detect the presence of 185 Bq (0.005 µCi) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with subsection (8)(a) of this section.

(5) If the leak test reveals the presence of 185 Bq (0.005 µCi) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in 902 KAR 100:019, 100:021, 100:040, and 100:058; and

(b) File a report within five (5) days of the leak test in accordance with 902 KAR 100:072, Section 18.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than thirty (30) days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 3.7 MBq (100 µCi) or less of beta or gamma-emitting material or 0.37 MBq (10 µCi) or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six (6) months before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a semiannual physical inventory of all these sources in its possession. The licensee shall retain each inventory record in accordance with subsection (8)(b) of this section.

(8) A licensee shall keep records of leaks tests and inventory of sealed sources and brachytherapy sources as follows:

(a) A licensee shall retain records of leak tests for three (3) years. The records shall include the model number and serial number, if one (1) has been assigned, of each source tested; the identity of each source by radionuclide and its estimated activity;

the results of the test; the date of the test; and the name of the individual who performed the test.

(b) A licensee shall retain records of the semiannual physical inventory of sealed sources and brachytherapy sources for three (3) years. The inventory records shall contain the model number of each source, and serial number if one (1) has been assigned, the identity of each source by radionuclide and its nominal activity, the location of each source, and the name of the individual who performed the inventory.

Section 25. Labeling of Vials and Syringes. Each syringe and vial that contains unsealed radioactive material shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when shielded.

Section 26. Surveys of Ambient Radiation Exposure Rate. (1) In addition to the surveys required by 902 KAR 100:019, a licensee shall survey with a radiation detection survey instrument at the end of each day of use. A licensee shall survey all areas where unsealed radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee shall not be required to perform the surveys required by subsection (1) of this section in an area where patients or human research subjects are confined when they cannot be released under Section 27 of this administrative regulation.

(3) A licensee shall retain a record of each survey for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to conduct the survey, and the name of the individual who performed the survey.

Section 27. Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material.

(1) A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed five (5) mSv (five-tenths (0.5) rem). NUREG-1556, Vol. 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding five (5) mSv (0.5 rem).

(2) A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed one (1) mSv (one-tenth (0.1) rem). If the total effective dose equivalent to a nursing infant or child could exceed one (1) mSv (one-tenth (0.1) rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(a) Guidance on the interruption or discontinuation of breast-feeding; and

(b) Information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with this section, if the total effective dose equivalent is calculated by:

(a) Using the retained activity rather than the activity administered;

(b) Using an occupancy factor less than 0.25 at one (1) meter;

(c) Using the biological or effective half-life; or

(d) Considering the shielding by tissue.

(4) A licensee shall retain a record that the instructions, required by this section, were provided to a breast-feeding female if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding five (5) mSv (five-tenths (0.5) rem).

(5) The records required by subsections (3), and (4) of this section shall be retained for three (3) years after the date of release of the individual.

(6) A report shall be filed in accordance with Section 15 of this



chapter and submitted to the cabinet if a dose greater than 50 mSv (5 rem) is received by an individual from a patient released under this section.

**Section 28. Provision of Mobile Medical Service.** (1) A licensee providing mobile medical service shall:

(a) Obtain a letter signed by the management of each client for which services are rendered that permits the use of byproduct material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;

(b) Check instruments used to measure the activity of unsealed radioactive material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this paragraph shall include a constancy check;

(c) Check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(d) Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in 902 KAR 100:019.

(2) A mobile medical service shall not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the byproduct material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.

(3) A licensee providing mobile medical services shall retain the letter required in subsection (1)(a) and the record of each survey required in subsection (1)(d) of this section respectively:

(a) A licensee shall retain a copy of each letter required in subsection (1)(a) that permits the use of radioactive material at a client's address. Each letter shall clearly delineate the authority and responsibility of the licensee and the client and shall be retained for three (3) years after the last provision of service.

(b) A licensee shall retain the record of each survey required by subsection (1)(d) for three (3) years. The record shall include the date of the survey, the results of the survey, the instrument used to make the survey, and the name of the individual who performed the survey.

(4) The cabinet shall license mobile medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 100:015, 100:019, 100:021, 100:040, 100:050, 100:060, 100:070, and 100:165.

**Section 29. Decay in storage.** (1) A licensee may hold radioactive material with a physical half-life of less than 120 days for decay in storage before disposal without regard to its radioactivity if the licensee:

(a) Holds radioactive material for decay a minimum of ten (10) half-lives;

(b) Monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(c) Removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

(2) A licensee shall retain a record of each disposal for three (3) years. The record shall include the:

(a) Date of the disposal;

(b) Date on which the radioactive material was placed in storage;

(c) Radionuclides disposed;

(d) Model and serial number of the survey instrument used;

(e) Background dose rate;

(f) Radiation dose rate measured at the surface of each waste container; and

(g) Name of the individual who performed the disposal.

**Section 30. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is Not Required.** Except for quantities that require a written directive

under Section 13(2), of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 and 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by:

(a) An authorized nuclear pharmacist;

(b) A physician who is an authorized user and who meets the requirements specified in Section 69 or 70 and Section 69(3)(a)2.g of this administrative regulation; or

(c) An individual under the supervision of either as specified in Section 12 of this administrative regulation; or

(3) Obtained from and prepared by a licensee of the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

**Section 31. Use of Unsealed Radioactive Material for Imaging and Localization Studies for Which a Written Directive is Not Required.** Except for quantities that require a written directive under Section 13(2) of this administrative regulation a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

(1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;

(2) Prepared by:

(a) An authorized nuclear pharmacist;

(b) A physician who is an authorized user and who meets the requirements specified in Sections 69 or 70 and Section 69(3)(a)2.g. of this administrative regulation; or

(c) An individual under the supervision, as specified in Section 12 of this administrative regulation;

(3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

**Section 32. Permissible Radionuclide Contaminant Concentration.** (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:

(a) 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or

(b) 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or

(c) 0.02 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride);

(2) A licensee preparing radiopharmaceuticals from radionuclide generators shall measure the concentration of radionuclide contaminant of the first eluate after receipt of a generator to demonstrate compliance with limits specified in subsection (1) of this section.

(3) A licensee required to measure radionuclide contaminant concentration, in this section, shall retain a record of each measurement for three (3) years;

(a) The record shall include, for each elution or extraction tested, the:

1. Measured activity of the radiopharmaceutical expressed in

millicuries;

2. Measured activity of contaminant expressed in microcuries;
  3. Ratio of the measurements in subsection (1)(a), (b), and (c) of this section expressed as microcuries of contaminant per millicurie of radiopharmaceutical;
  4. Date of the test; and
  5. Initials of the individual who performed the test.
- (b) A licensee shall report immediately to the cabinet each occurrence of contaminant concentration exceeding the limits specified in this section.

Section 33. Use of Unsealed Radioactive Material for Which a Written Directive is Required. A licensee may use any unsealed radioactive material prepared for medical use and for which a written directive is required that is:

- (1) Obtained from a manufacturer or preparer licensed under 902 KAR 100:040 or 902 KAR 100:058 of this chapter, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements;
- (2) Prepared by an authorized nuclear pharmacist; a physician who is an authorized user and who meets the requirements specified in Section 69 or 70 of this administrative regulation, or an individual under the supervision, as specified in Section 12 of this administrative regulation;
- (3) Obtained from and prepared by a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or
- (4) Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

Section 34. Safety Instruction. (1) In addition to 902 KAR 100:165, a licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for the patient or the human research subjects receiving radiopharmaceutical therapy and hospitalized for compliance with Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

- (a) Patient or human research subject control;
  - (b) Visitor control:
    1. Routine visitation to hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and
    2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter;
  - (c) Contamination control;
  - (d) Waste control; and
  - (e) Notification of the radiation safety officer, or his or her designee, and the authorized user if the patient or the human research subject has a medical emergency or dies.
- (2) A licensee shall retain a record of individuals receiving safety instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

Section 35. Safety Precautions. (1) For each patient or human research subject who cannot be released under Section 27 of this administrative regulation a licensee shall:

- (a) Quarter the patient or the human research subject either in:
  1. A private room with a private sanitary facility; or
  2. A room, with a private sanitary facility, with another individual who also has received therapy with unsealed radioactive material and who also cannot be released under Section 27 of this administrative regulation;
- (b) Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign;
- (c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room; and
- (d) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey

instrument set on its most sensitive scale and with no interposed shielding, or handle the material and items as radioactive waste.

(2) A licensee shall notify the radiation safety officer, or his or her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Section 36. Suppliers for Sealed Sources or Devices for Medical Use. For medical use, a licensee shall only use:

- (1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state;
- (2) Sealed sources or devices noncommercially transferred from a 902 KAR 100:072 license, U.S. Nuclear Regulatory Commission, or equivalent State Medical License; or
- (3) Teletherapy sources manufactured and distributed in accordance with a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.

Section 37. Use of Sources for Manual Brachytherapy. A licensee shall use only brachytherapy sources for therapeutic medical uses:

- (1) As approved in the Sealed Source and Device Registry; or
- (2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA if the requirements of Section 36(1) of this administrative regulation are met.

Section 38. Surveys After Source Implant and Removal. (1) Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.

(2) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.

(3) A licensee shall retain a record of the surveys required by subsections (1) and (2) of this section for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

Section 39. Brachytherapy Sources Accountability. (1) A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.

(2) As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.

(3) A licensee shall maintain a record of the brachytherapy source accountability for three (3) years for:

- (a) Temporary implants, the record shall include:
  1. The number and activity of sources removed from storage, the time and date they were removed from storage, the name of the individual who removed them from storage, and the location of use; and
  2. The number and activity of sources returned to storage, the time and date they were returned to storage, and the name of the individual who returned them to storage.
- (b) Permanent implants, the record shall include:
  1. The number and activity of sources removed from storage, the date they were removed from storage, and the name of the individual who removed them from storage;
  2. The number and activity of sources not implanted, the date they were returned to storage, and the name of the individual who returned them to storage; and
  3. The number and activity of sources permanently implanted in the patient or human research subject.

Section 40. Safety Instruction. In addition to the requirements of 902 KAR 100:165 of this chapter. (1) The licensee shall provide radiation safety instruction, initially and at least annually, to

personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released under Section 27 of this administrative regulation. To satisfy this requirement, the instruction shall be commensurate with the duties of the personnel and shall include the:

- (a) Size and appearance of the brachytherapy sources;
- (b) Safe handling and shielding instructions;
- (c) Patient or human research subject control;
- (d) Visitor control, including both:
  1. Routine visitation of hospitalized individuals in accordance with 902 KAR 100:019, Section 10(1)(a) of this chapter; and
  2. Visitation authorized in accordance with 902 KAR 100:019, Section 10(6) of this chapter; and
- (e) Notification of the radiation safety officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

(2) A licensee shall retain a record of individuals receiving instruction for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.

**Section 41. Safety Precautions.** (1) For each patient or human research subject who is receiving brachytherapy and cannot be released under Section 27 of this administrative regulation a licensee shall:

- (a) Not quarter the patient or the human research subject in the same room as an individual who is not receiving brachytherapy;
- (b) Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and
- (c) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

(2) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

- (a) Dislodged from the patient; and
  - (b) Lodged within the patient following removal of the source applicators.
- (3) A licensee shall notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

**Section 42. Calibration Measurements of Brachytherapy Sources.** (1) Before the first medical use of a brachytherapy source on or after October 24, 2005, a licensee shall have:

- (a) Determined the source output or activity using a dosimetry system that meets the requirements of Section 51(1) of this administrative regulation;
- (b) Determined source positioning accuracy within applicators; and
- (c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of subsection (1)(a) and (b) of this section.

(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.

(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(4) A licensee shall retain a record of each calibration of brachytherapy sources required by this section for three (3) years after the last use of the source. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number for the source and the instruments used to calibrate the source;
- (c) The source output or activity;
- (d) The source positioning accuracy within the applicators; and
- (e) The name of the individual, source manufacturer, or the calibration laboratory that performed the calibration.

**Section 43. Decay of strontium-90 sources for ophthalmic treatments.** (1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined under Section 42 of this administrative regulation.

(2) A licensee shall retain a record of the activity of each strontium-90 source for the life of the source. The record shall include:

- (a) The date and initial activity of the source as determined under Section 42 of this administrative regulation; and
- (b) For each decay calculation, the date and the source activity as determined under subsection (1) of this section.

**Section 44. Therapy-related computer systems.** The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally-recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

- (1) The source-specific input parameters required by the dose calculation algorithm;
- (2) The accuracy of dose, dwell time, and treatment time calculations at representative points;
- (3) The accuracy of isodose plots and graphic displays; and
- (4) The accuracy of the software used to determine sealed source positions from radiographic images.

**Section 45. Use of Sealed Sources for Diagnosis.** A licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.

**Section 46. Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit.** A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:

- (1) As approved in the Sealed Source and Device Registry; or
- (2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of Section 36(1) of this administrative regulation are met.

**Section 47. Surveys of Patients and Human Research Subjects Treated with a Remote Afterloader Unit.** (1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the source has been removed from the patient or human research subject and returned to the safe shielded position.

(2) A licensee shall retain a record of the surveys for three (3) years. Each record shall include the date and results of the survey, the survey instrument used, and the name of the individual who made the survey.

**Section 48. Installation, Maintenance, Adjustment, and Repair.** (1) Only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the cabinet, U.S. Nuclear Regulatory

Commission, or equivalent agreement state or an authorized medical physicist shall install, replace, relocate, or remove a sealed source contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units for three (3) years. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service, and name of the individual who performed the work.

Section 49. Safety Procedures and instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall:

(a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(b) Permit only individuals approved by the authorized user, radiation safety officer, or authorized medical physicist to be present in the treatment room during treatment with the source;

(c) Prevent dual operation of more than one (1) radiation producing device in a treatment room if applicable; and

(d) Develop, implement, and maintain written procedures for responding to an abnormal situation if the operator is unable to place the source in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:

1. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

2. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

3. The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by subsection (1)(d) of this section shall be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

(a) The location of the procedures required by subsection (1)(d) of this section; and

(b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(4) A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:

(a) The procedures identified in paragraph (1)(d) of this section; and

(b) The operating procedures for the unit.

(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee shall retain a record of individuals receiving instructions for three (3) years. The record shall include a list of the topics covered, the date of the instruction, the name of the attendee, and the name of the individual who provided the instruction.

(7) A licensee shall retain a copy of the procedures until the licensee no longer possesses the remote afterloader, teletherapy unit, or gamma stereotactic radiosurgery unit.

Section 50. Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units.

(1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that shall:

(a) Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(b) Cause the source to be shielded when an entrance door is opened; and

(c) Prevent the source from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

(a) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the unit. This backup power supply may be a battery system.

(b) If the radiation monitor is inoperable, the licensee shall require any individual entering the treatment room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as established in this section.

(c) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities in which a source is placed within the patient's or human research subject's body, a licensee shall only conduct treatments that allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in subsections (1) through (5) of this section, a licensee shall:

(a) For medium dose-rate and pulsed dose-rate remote afterloader units, require:

1. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator if there is an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.

(b) For high dose-rate remote afterloader units, require:

1. An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

2. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.

(c) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.

(d) Notify the radiation safety officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Remaining in the unshielded position; or

(b) Lodged within the patient following completion of the treatment.

Section 51. Dosimetry Equipment. (1) Except for low dose-rate remote afterloader sources in which the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one (1) of the following two (2) conditions shall be met:

(a) The system shall have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and published protocols accepted by nationally recognized bodies or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two (2)

years and after any servicing that may have affected system calibration; or

(b) The system shall have been calibrated within the previous four (4) years. Eighteen (18) to thirty (30) months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past twenty-four (24) months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall indicate that the calibration factor of the licensee's system had not changed by more than two (2) percent. The licensee shall not use the intercomparison result to change the calibration factor. If intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (1) of this section. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (1) of this section.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison in accordance with this section for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include:

- (a) The date;
- (b) The manufacturer's name, model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by subsections (1) and (2) of this section;
- (c) The correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and
- (d) The names of the individuals who performed the calibration, intercomparison, or comparison.

Section 52. Full Calibration Measurements on Teletherapy Units. (1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

- (a) Before the first medical use of the unit;
  - (b) Before medical use under the following conditions:
    1. If spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;
    2. Following replacement of the source or following reinstallation of the teletherapy unit in a new location; or
    3. Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and
  - (c) At intervals not exceeding one (1) year.
- (2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:
- (a) The output within  $\pm$  three (3) percent for the range of field sizes and for the distance or range of distances used for medical use;
  - (b) The coincidence of the radiation field and the field indicated by the light beam-localizing device;
  - (c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;
  - (d) Timer accuracy and linearity over the range of use;
  - (e) On-off error; and
  - (f) The accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay for intervals not exceeding one (1) month for cobalt-60, six (6) months for cesium-137, or at intervals consistent with one (1) percent decay for all other nuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;
- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 53. Full calibration measurements on remote afterloader units. (1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
  - (b) Before medical use under the following conditions:
    1. Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and
    2. Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly;
  - (c) At intervals not exceeding one (1) quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds seventy-five (75) days; and
  - (d) At intervals not exceeding one (1) year for low dose-rate remote afterloader units.
- (2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include, as applicable, determination of:
- (a) The output within  $\pm$  five (5) percent;
  - (b) Source positioning accuracy to within  $\pm$  one (1) millimeter;
  - (c) Source retraction with backup battery upon power failure;
  - (d) Length of the source transfer tubes;
  - (e) Timer accuracy and linearity over the typical range of use;
  - (f) Length of the applicators; and
  - (g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally-recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (2) of this section, a licensee shall perform an autoradiograph of the source to verify inventory and source arrangement at intervals not exceeding one (1) quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (1) through (5) of this section.

(7) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay at intervals consistent with one (1) percent physical decay.

(8) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection

(7) of this section shall be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;
- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and
- (e) The signature of the authorized medical physicist who performed the full calibration.

Section 54. Full calibration measurements on gamma stereotactic radiosurgery units (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
- (b) Before medical use under the following conditions:
  1. Whenever spot-check measurements indicate that the output differs by more than five (5) percent from the output obtained at the last full calibration corrected.
  2. Following replacement of the sources or following reinstallation of the gamma mathematically for radioactive decay; stereotactic radiosurgery unit in a new location; and
  3. Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and
- (c) At intervals not exceeding one (1) year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements shall include determination of:

- (a) The output within  $\pm$  three (3) percent;
- (b) Relative helmet factors;
- (c) Isocenter coincidence;
- (d) Timer accuracy and linearity over the range of use;
- (e) On-off error;
- (f) Trunnion centricity;
- (g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
- (h) Helmet microswitches;
- (i) Emergency timing circuits; and
- (j) Stereotactic frames and localizing devices (trunnions).

(3) A licensee shall use the dosimetry system described in Section 51(1) of this administrative regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section at intervals not exceeding one (1) month for cobalt-60 and at intervals consistent with one (1) percent physical decay for all other radionuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section shall be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration for three (3) years. The record shall include:

- (a) The date of the calibration;
- (b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery unit, the source, and the instruments used to calibrate the unit;
- (c) The results and an assessment of the full calibrations;
- (d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

Section 55. Periodic Spot-checks for Teletherapy Units. (1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that shall include determination of:

- (a) Timer accuracy, and timer linearity over the range of use;
- (b) On-off error;
- (c) The coincidence of the radiation field and the field indicated by the light beam localizing device;
- (d) The accuracy of all distance measuring and localization devices used for medical use;
- (e) The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation; and
- (f) The difference between the measurement made in subsection (1)(e) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:

- (a) Electrical interlocks at each teletherapy room entrance;
- (b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);
- (c) Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;
- (d) Viewing and intercom systems;
- (e) Treatment room doors from inside and outside the treatment room; and

(f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for teletherapy units for three (3) years. The record shall include:

- (a) The date of the spot-check;
- (b) The manufacturer's name, model number, and serial number of the teletherapy unit, source and instrument used to measure the output of the teletherapy unit;
- (c) An assessment of timer linearity and constancy;
- (d) The calculated on-off error;
- (e) A determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;
- (f) The determined accuracy of each distance measuring and localization device;
- (g) The difference between the anticipated output and the measured output;
- (h) Notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each source exposure indicator light, and the viewing and intercom system and doors; and
- (i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by



subsection (2) of this section until the licensee no longer possesses the teletherapy unit.

**Section 56. Periodic Spot-checks for Remote Afterloader Units.**

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

(a) Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;

(b) Before each patient treatment with a low dose-rate remote afterloader unit; and

(c) After each source installation.

(2) A licensee shall perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of subsection (1) of this section, spot-checks shall, at a minimum, assure proper operation of:

(a) Electrical interlocks at each remote afterloader unit room entrance;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(d) Emergency response equipment;

(e) Radiation monitors used to indicate the source position;

(f) Timer accuracy;

(g) Clock (date and time) in the unit's computer; and

(h) Decayed source activity in the unit's computer.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check for remote afterloader units for three (3) years. The record shall include, as applicable:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the remote afterloader unit and source;

(c) An assessment of timer accuracy;

(d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom systems, and clock and decayed source activity in the unit's computer; and

(e) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(7) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the remote afterloader unit.

**Section 57. Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units.** (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

(a) Monthly;

(b) Before the first use of the unit on a given day; and

(c) After each source installation.

(2) A licensee shall:

(a) Perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual shall not be required to actually perform the spot-check measurements.

(b) Have the authorized medical physicist review the results of each spot-check within fifteen (15) days. The authorized medical

physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of subsection (1)(a) of this section, spot-checks shall, at a minimum:

(a) Assure proper operation of:

1. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

2. Helmet microswitches;

3. Emergency timing circuits; and

4. Stereotactic frames and localizing devices (trunnions).

(b) Determine:

1. The output for one (1) typical set of operating conditions measured with the dosimetry system described in Section 51(2) of this administrative regulation;

2. The difference between the measurement made in subsection (3)(b)1. of this section and the anticipated output, expressed as a percentage of the anticipated output (the value obtained at last full calibration corrected mathematically for physical decay);

3. Source output against computer calculation;

4. Timer accuracy and linearity over the range of use;

5. On-off error; and

6. Trunnion centricity.

(4) To satisfy the requirements of subsection (1)(b) and (c) of this section, spot-checks shall assure proper operation of:

(a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Timer termination;

(e) Radiation monitors used to indicate room exposures; and

(f) Emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in subsection (3) of this section that is not operating properly as soon as possible.

(6) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(7) A licensee shall retain a record of each spot-check for gamma stereotactic radiosurgery units required by this section for three (3) years. The record shall include:

(a) The date of the spot-check;

(b) The manufacturer's name, model number, and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;

(c) An assessment of timer linearity and accuracy;

(d) The calculated on-off error;

(e) A determination of trunnion centricity;

(f) The difference between the anticipated output and the measured output;

(g) An assessment of source output against computer calculations;

(h) Notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency off buttons, electrical interlocks, source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions); and

(i) The name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(8) A licensee shall retain a copy of the procedures required by subsection (2) of this section until the licensee no longer possesses the gamma stereotactic radiosurgery unit.

**Section 58. Additional Technical Requirements for Mobile Remote Afterloader Units.** (1) A licensee providing mobile remote afterloader service shall:

(a) Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent;

and

(b) Account for all sources before departure from a client's address of use.

(2) In addition to the periodic spot-checks required by Section 56 of this administrative regulation a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of:

- (a) Electrical interlocks on treatment area access points;
- (b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;
- (c) Viewing and intercom systems;
- (d) Applicators, source transfer tubes, and transfer tube applicator interfaces;
- (e) Radiation monitors used to indicate room exposures;
- (f) Source positioning (accuracy); and
- (g) Radiation monitors used to indicate whether the source has returned to a safe shielded position.

(3) In addition to the requirements for checks in subsection (2) of this section, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in subsection (2) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and shall not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) A licensee shall retain a record of each check for mobile remote afterloader units for three (3) years. The record shall include:

- (a) The date of the check;
- (b) The manufacturer's name, model number, and serial number of the remote afterloader unit;
- (c) Notations accounting for all sources before the licensee departs from a facility;
- (d) Notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom system, applicators, source transfer tubes, and transfer tube applicator interfaces, and source positioning accuracy; and
- (e) The signature of the individual who performed the check.

Section 59. Radiation Surveys. (1) In addition to the survey requirement in 902 KAR 100:019, Section 12, a person licensed under this administrative regulation shall conduct surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the source in the shielded position do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee shall conduct the survey required by subsection (1) of this section at installation of a new source and following repairs to the source shielding, the source driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the source, or compromise the radiation safety of the unit or the source.

(3) A licensee shall maintain a record of radiation surveys of treatment units for the duration of use of the unit. The record shall include:

- (a) The date of the measurements;
- (b) The manufacturer's name, model number and serial number of the treatment unit, source, and instrument used to measure radiation levels;
- (c) Each dose rate measured around the source while the unit is in the off position and the average of all measurements; and
- (d) The signature of the individual who performed the test.

Section 60. Five (5) year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units. (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five (5) years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing may only be performed by

persons specifically licensed to do so by the cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state.

(3) A licensee shall maintain a record of the five (5) year inspections for teletherapy and gamma stereotactic radiosurgery units for the duration of use of the unit. The record shall contain:

- (a) The inspector's radioactive materials license number;
- (b) The date of inspection;
- (c) The manufacturer's name and model number and serial number of both the treatment unit and source;
- (d) A list of components inspected and serviced, and the type of service; and
- (e) The signature of the inspector.

Section 61. Therapy-related Computer Systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

- (1) The source-specific input parameters required by the dose calculation algorithm;
- (2) The accuracy of dose, dwell time, and treatment time calculations at representative points;
- (3) The accuracy of isodose plots and graphic displays;
- (4) The accuracy of the software used to determine sealed source positions from radiographic images; and
- (5) The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

Section 62. Other Medical Uses of Radioactive Material or Radiation from Radioactive Material. A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in Sections 30, 31, 33, 37, 45, and 46 of this administrative regulation if:

- (1) The applicant or licensee has submitted the information required by Section 4(2) through (4) of this administrative regulation; and
- (2) The applicant or licensee has received written approval from the cabinet in a license or license amendment and uses the material in accordance with the administrative regulations and specific conditions the cabinet considers necessary for the medical use of the material.

Section 63. Recentness of Training. The training and experience specified in Sections 64 through 77 of this administrative regulation shall have been obtained within the seven (7) years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Section 64. Training for Radiation Safety Officer. Except as provided in Section 67 of this administrative regulation, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 902 KAR 100:072, Section 10 to be an individual who:

(1)(a) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsections (2) and (3) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty (20) college credits in physical science;

b. Have five (5) or more years of professional experience in health physics (graduate training may be substituted for no more than two (2) years of the required experience) including at least three (3) years in applied health physics; and

c. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurements of

radioactivity, radiation biology, and radiation dosimetry; or

2.a. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

b. Have two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics;

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

(ii) In clinical nuclear medicine facilities providing diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in 902 KAR 100:072, Sections 67, 69, or 70 of this administrative regulation; and

c. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety;

(b) Has completed a structured educational program consisting of both:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Radiation biology; and

e. Radiation dosimetry; and

2. One (1) year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or permit issued by a Commission master material licensee that authorizes similar type of use of radioactive material involving the following:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

c. Securing and controlling radioactive material;

d. Using administrative controls to avoid mistakes in the administration of radioactive material;

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

f. Using emergency procedures to control radioactive material; and

g. Disposing of radioactive material; or

(c)1. Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state pursuant to 902 KAR 100:072, Section 65(1), and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer, and who meets the requirements in subsections (2) and (3) of this section; or

2. Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities;

(2) Has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(3) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type of

use for which the licensee is seeking approval.

Section 65. Training for an Authorized Medical Physicist. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized medical physicist to be an individual who:

(1)(a) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in paragraph (b)2. of this subsection and subsection (2) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

2. Have two (2) years of full-time practical training, two (2) years of supervised experience, or two (2) years of a combination of full-time practical training and supervised experience in medical physics:

a. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

b. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services under the direction of physicians who meet the requirements in Section 67, 74, or 77 of this administrative regulation; and

3. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(b) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one (1) year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provides high-energy, external beam therapy (photons and electrons with energies greater than or equal to one (1) million electron volts) and brachytherapy services and shall include:

1. Performing sealed source leak test and inventories;

2. Performing decay corrections;

3. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in Sections 65 or 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type of use for which authorization is sought that includes hands-on device operation, safety operations, clinical use, and the operation of a treatment planning system. This training requirement shall be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type of use for which the individual is seeking authorization.

Section 66. Training for an Authorized Nuclear Pharmacist.

Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified by a specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (2)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(b) Hold a current, active license to practice pharmacy;

(c) Provide evidence of having acquired at least 4,000 hours of training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2,000 hours of the required training and experience; and

(d) Pass an examination in nuclear pharmacy administered by diplomats of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2)(a) Has completed 700 hours in a structured educational program consisting of both:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Supervised practical experience in a nuclear pharmacy involving:

a. Shipping, receiving, and performing related radiation surveys;

b. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

c. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

d. Using administrative controls to avoid medical events in the administration of radioactive material; and

e. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in subsections (1)(a), (1)(b) and (1)(c) or (2)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

Section 67. Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist and Authorized Nuclear Pharmacist. (1)(a) An individual identified as a radiation safety officer, a teletherapy or medical physicist, or a nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2005 shall not be required to comply with the training requirements of Section 64, 65, or 66, of this administrative regulation respectively:

(b) An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on a cabinet, U.S. Nuclear Regulatory Commission, or agreement state license or a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee or master material license permit or master material

licensee permittee of broad scope between October 24, 2002 and April 29, 2005 is not required to comply with the training requirements of Section 64, 65, or 66 of this administrative regulation respectively.

(2)(a) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state broad scope licensee, or a permit issued by a Commission master material license broad scope permittee before October 24, 2002 who perform only those medical uses for which they were authorized on that date shall not be required to comply with the training requirements of 902 KAR 100.072, Sections 68 through 77.

(b) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, a permit issued by a Commission master material licensee, a permit issued by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state broad scope licensee or a permit issued by a Commission master material license broad scope permittee who performs only those medical uses for which they were authorized between October 24, 2002 and April 29, 2005 shall not be required to comply with the training requirements of Sections 68 through 77 of this administrative regulation.

Section 68. Training for Uptake, Dilution, and Excretion Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 30 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete sixty (60) hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (3)(a)1 through 3(a)2 of this section; and

(b) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;

(2) Is an authorized user under Section 69 or 70 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has completed sixty (60) hours of training and experience, including a minimum of eight (8) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include:

1. Classroom and laboratory training, in the following areas;

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in Section 67, 68, 69, or 70, of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;  
d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;  
e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and  
f. Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Section 67, 68, 69, or 70 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Section 30 of this administrative regulation.

Section 69. Training for Imaging and Localization Studies. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 31 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (3)(b) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subsection (3)(a)1 through (3)(a)2 of this section; and

(b) Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;

(2) Is an authorized user pursuant to Section 70 of this administrative regulation and meets the requirements in subsection (3)(a)2.g of this section, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has completed 700 hours of training and experience, including a minimum of eighty (80) hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include, at a minimum:

1. Classroom and laboratory training in the following areas:  
a. Radiation physics and instrumentation;  
b. Radiation protection;  
c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and  
e. Radiation biology; and

2. Work experience, under the supervision of an authorized user, who meets the requirements in Section 67, 69 or 70 and Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;  
b. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

f. Administering dosages of radioactive drugs to patients or human research subjects; and

g. Eluting generator systems appropriate for preparation of

radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 69, or 70 and Section 69(3)(a)2.g of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (3)(a) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Sections 30 and 31 of this administrative regulation.

Section 70. Training for Use of Unsealed Radioactive Material for Which a Written Directive Is Required. Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user of unsealed radioactive material for the uses authorized pursuant to Section 33 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission or an agreement state, and who meets the requirements in subsection (2)(a)2.f and (b) of this section. To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in subsection (2)(a)1 through 2.e of this section. Eligible training programs shall be approved by:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by the diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2)(a) Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include:

1. Classroom and laboratory training in the following areas:  
a. Radiation physics and instrumentation;  
b. Radiation protection;  
c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and  
e. Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user, who meets the requirements in this subsection, shall have experience in administering dosages in the same dosage category or categories (clause f. of this subparagraph) of this administrative regulation as the individual requesting authorized user status. The work experience shall involve:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subject dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

f. Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three (3) cases in each of the following categories for which the individual is requesting authorized user status:

(i) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required;

(ii) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;

(iii) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; or

(iv) Parenteral administration of any other radionuclide, for which a written directive is required; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) and (2)(a)2.f. or (2)(a) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements of this section, and section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. The preceptor authorized user, who meets the requirements in subsection (2) of this section, shall have experience in administering dosages in the same dosage category or categories (Section 70(2)(a)2.f. of this administrative regulation as the individual requesting authorized user status.

Section 71. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section and whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (3)(c) of this section;

(2) Is an authorized user pursuant to Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(i) or (ii), or Section 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use; and

5. Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, 71, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user who meets the requirements in Section 70 (2)(a) of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for

proper operation for survey meters;

3. Calculating, measuring, and safely preparing patient or human research subject dosages;

4. Using administrative controls to prevent a medical event involving the use of radioactive material;

5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Administering dosages to patients or human research subjects, that includes at least three (3) cases involving the oral administration of less than or equal to 1.2 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70, 71, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A preceptor authorized user, who meets the requirement in Section 70(2) of this administrative regulation shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(i) or (ii) of this administrative regulation.

Section 72. Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries). Except as provided in Section 67 of this administrative regulation the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (b) of this section, and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in subsection (3)(c) of this section; or

(2) Is an authorized user pursuant to Section 70 of this administrative regulation for uses listed in Section 70(2)(a)2.f.(ii) of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(3)(a) Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection; and

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use; and

5. Radiation biology;

(b) Has work experience, under the supervision of an authorized user who meets the requirements in Section 67, 70, or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A supervising authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall also have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii) of this administrative regulation. The work experience shall involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

3. Calculating, measuring, and safely preparing patient or human research subject dosages;

4. Using administrative controls to prevent a medical event involving the use of radioactive material;

5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

6. Administering dosages to patients or human research



subjects, that includes at least three (3) cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized pursuant to Section 33 of this administrative regulation. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Section 67, 70 or 72 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70(2) of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(ii).

Section 73. Training for the Parenteral Administration of Unsealed Radioactive Material Requiring a Written Directive. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user pursuant to Section 70 for uses listed in Section 70(2)(a)2.f.(iii) or Section 70(2)(a)2.f.(iv) of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(2)(a)1. Is an authorized user pursuant to Sections 74 or 77 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state and who meets the requirements in paragraph (b) of this subsection; or

2. Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state pursuant to Sections 74 or 77 of this administrative regulation; and who meets the requirements in paragraph (b) of this subsection; and

(b)1. Has successfully completed eighty (80) hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of a beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of other radionuclides for which a written directive is required. The training shall include:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity;

d. Chemistry of radioactive material for medical use; and

e. Radiation biology;

2. Has work experience, under the supervision of an authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, in the parenteral administration, for which a written directive is required, of a beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of other radionuclides for which a written directive is required. A supervising authorized user who meets the requirements in Section 70 of this administrative regulation shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv) of this administrative regulation or both. The work experience shall involve:

a. Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

b. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

c. Calculating, measuring, and safely preparing patient or human research subjects dosages;

d. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

e. Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

f. Administering dosages to patients or human research subjects, that include at least three (3) cases involving the

parenteral administration, for which a written directive is required, of a beta emitter, or photon-emitting radionuclide with a photon energy less than 150 keV, or a minimum of three (3) cases involving the parenteral administration of other radionuclides, for which a written directive is required, or both; and

3. Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (a)1. or 2. of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Sections 67, 70, or 73 of this administrative regulation, U.S. Nuclear Regulatory Commission, or equivalent agreement state requirements. A preceptor authorized user, who meets the requirements in Section 70 of this administrative regulation, shall have experience in administering dosages as specified in Section 70(2)(a)2.f.(iii) or (iv) of this administrative regulation or both.

Section 74. Training for Use of Manual Brachytherapy Sources. Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized pursuant to Section 37 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in (2)(c) of this section. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three (3) years of residency training in a radiation oncology program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education; or

2. Royal College of Physicians and Surgeons of Canada; or

3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

1. 200 hours of classroom and laboratory training in the following areas:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements at a medical institution, involving:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Checking survey meters for proper operation;

c. Preparing, implanting, and removing brachytherapy sources;

d. Maintaining running inventories of material on hand;

e. Using administrative controls to prevent a medical event involving the use of radioactive material;

f. Using emergency procedures to control radioactive material; and

(b) Has completed three (3) years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate

Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2. of this section; and

(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized pursuant to Section 37 of this administrative regulation.

Section 75. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 67 of this administrative regulation the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user pursuant to Section 74 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements; or

(2)(a) Has completed twenty-four (24) hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals. This supervised clinical training shall involve:

1. Examination of each individual to be treated;
2. Calculation of the dose to be administered;
3. Administration of the dose; and
4. Follow-up and review of each individual's case history; and

(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Sections 67, 74, or 75 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, that the individual has satisfactorily completed the requirements in subsection (2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

Section 76. Training for use of sealed sources for diagnosis. Except as provided in Section 67 of this administrative regulation, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized pursuant to Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(1)(a) Is certified by a specialty board whose certification process includes all of the requirements in paragraph (b) of this subsection and subsection (2) of this section and whose certification has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state; or

(b) Has completed eight (8) hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology; and

(2) Has completed training in the use of the device for the uses requested.

Section 77. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units.

Except as provided in Section 67 of this administrative regulation, the licensee shall require an authorized user of a sealed source for a use authorized pursuant to Section 46 of this administrative regulation to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state and who meets the requirements in (2)(c) and (3) of this section. To have its certification recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three (3) years of residency training in a radiation therapy program approved by the:

1. Residency Review Committee of the Accreditation Council for Graduate Medical Education;
2. Royal College of Physicians and Surgeons of Canada; or
3. Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

1. 200 hours of classroom and laboratory training in the following areas:
  - a. Radiation physics and instrumentation;
  - b. Radiation protection;
  - c. Mathematics pertaining to the use and measurement of radioactivity; and
  - d. Radiation biology; and
2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements at a medical institution, involving:
  - a. Reviewing full calibration measurements and periodic spot checks;
  - b. Preparing treatment plans and calculating treatment doses and times;
  - c. Using administrative controls to prevent a medical event involving the use of radioactive material;
  - d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
  - e. Checking and using survey meters; and
  - f. Selecting the proper dose and how it is to be administered;

and

(b) Has completed three (3) years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (2)(a)2 of this section; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (1)(a) or (2)(a) and (b), and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this section, or Section 67 of this administrative regulation, or equivalent U.S. Nuclear Regulatory Commission or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(3) Has received training in device operation, safety

procedures, and clinical use for the type of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type of use for which the individual is seeking authorization.

Section 78. Alternative Training. During a two (2) year period after the effective date of October 24, 2005, alternative training and experience requirements shall be available. Licensees shall have the option of complying with either the training requirements of Section 78 of this administrative regulation or the new requirements in Sections 65 through 77 of this administrative regulation. After October 24, 2007, licensee shall not have the option of using Section 78 of this administrative regulation. Except as provided in Section 67 of this administrative regulation, the licensee shall require for:

(1) A radiation safety officer, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 10 of this administrative regulation to be an individual who:

(a) Is certified by the:

1. American Board of Health Physics in Comprehensive Health Physics;
2. American Board of Radiology;
3. American Board of Nuclear Medicine;
4. American Board of Science in Nuclear Medicine;
5. Board of Pharmaceutical Specialties in Nuclear Pharmacy;
6. American Board of Medical Physics in radiation oncology physics;
7. Royal College of Physicians and Surgeons of Canada in nuclear medicine;
8. American Osteopathic Board of Radiology; or
9. American Osteopathic Board of Nuclear Medicine;

(b) Has had classroom and laboratory training and experience as follows:

1. 200 hours of classroom and laboratory training that includes:
  - a. Radiation physics and instrumentation;
  - b. Radiation protection;
  - c. Mathematics pertaining to the use and measurement of radioactivity;
  - d. Radiation biology; and
  - e. Radiopharmaceutical chemistry; and
2. One (1) year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the radiation safety officer on a cabinet, U.S. Nuclear Regulatory Commission, or equivalent agreement state license that authorizes the medical use of radioactive material; or

(c) Is an authorized user identified on the licensee's license.

(2) Authorized user of a radiopharmaceutical for uptake, dilution, and excretion in Section 30(1) of this administrative regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;
2. Diagnostic radiology by the American Board of Radiology;
3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;
4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:

1. Forty (40) hours of classroom and laboratory training that includes:
  - a. Radiation physics and instrumentation;
  - b. Radiation protection;
  - c. Mathematics pertaining to the use and measurement of radioactivity;
  - d. Radiation biology; and

e. Radiopharmaceutical chemistry; and

2. Twenty (20) hours of supervised clinical experience under the supervision of an authorized user and that includes:

- a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
- b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
- c. Administering dosages to patients or human research subjects and using syringe radiation shields;
- d. Collaborating with the authorized user in the interpretation of radioisotope test results; and
- e. Patient or human research subject follow up; or

(c) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

(3) Authorized user for imaging and localization studies using a radiopharmaceutical, generator, or reagent kit in Section 31(1) of this administrative regulation to be a physician who:

(a) Is certified in:

1. Nuclear medicine by the American Board of Nuclear Medicine;
2. Diagnostic radiology by the American Board of Radiology;
3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology;
4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
5. American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(c) 1. 200 hours of classroom and laboratory training that includes:

- a. Radiation physics and instrumentation;
- b. Radiation protection;
- c. Mathematics pertaining to the use and measurement of radioactivity;
- d. Radiopharmaceutical chemistry; and
- e. Radiation biology;
2. 500 hours of supervised work experience under the supervision of an authorized user that includes:

- a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- b. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
- c. Calculating and safely preparing patient or human research subject dosages;
- d. Using administrative controls to prevent the medical event of radioactive material;
- e. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
- f. Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m-labeled radiopharmaceuticals; and

3. 500 hours of supervised clinical experience under the supervision of an authorized user that includes:

- a. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
- b. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
- c. Administering dosages to patients or human research subjects and using syringe radiation shields;
- d. Collaborating with the authorized user in the interpretation of radioisotope test results; and
- e. Patient or human research subject follow up; or
- (c) Has successfully completed a six (6) month training

program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

(4) The authorized user of radiopharmaceuticals for therapeutic use in Section 33 of this administrative regulation to be a physician who:

(a) Is certified by:

1. The American Board of Nuclear Medicine;

2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;

3. The Royal College of Physicians and Surgeons of Canada in nuclear medicine; or

4. The American Osteopathic Board of Radiology after 1984; or

(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

1. Eighty (80) hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology; and

2. Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

a. Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals; and

b. Use of iodine-131 for treatment of thyroid carcinoma in three (3) individuals.

(5) The authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten (10) individuals.

(6) The authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(a) Eighty (80) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three (3) individuals.

(7) The authorized user of a brachytherapy source in Section 36 of this administrative regulation for therapy to be a physician who:

(a) Is certified in:

1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Radiation oncology by the American Osteopathic Board of

Radiology;

3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

1. 200 hours of classroom and laboratory training that includes:

a. Radiation physics and instrumentation;

b. Radiation protection;

c. Mathematics pertaining to the use and measurement of radioactivity; and

d. Radiation biology;

2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

a. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

b. Checking survey meters for proper operation;

c. Preparing, implanting, and removing sealed sources;

d. Maintaining running inventories of material on hand;

e. Using administrative controls to prevent a medical event involving radioactive material; and

f. Using emergency procedures to control radioactive material; and

3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

a. Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

b. Selecting the proper brachytherapy sources and dose and method of administration;

c. Calculating the dose; and

d. Post-administration follow-up and review of case histories in collaboration with the authorized user.

(8) The authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(a) Twenty-four (24) hours of classroom and laboratory training that includes:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five (5) individuals that includes:

1. Examination of each individual to be treated;

2. Calculation of the dose to be administered;

3. Administration of the dose; and

4. Follow up and review of each individual's case history.

(9) The authorized user of a sealed source for diagnosis in a device listed in Section 45 of this administrative regulation to be a physician, dentist, or podiatrist who:

(a) Is certified in:

1. Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

2. Nuclear medicine by the American Board of Nuclear Medicine;

3. Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

4. Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) Has had eight (8) hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

1. Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;
2. Radiation biology;
3. Radiation protection; and
4. Training in the use of the device for the uses requested.

(10) The authorized user of a sealed source for therapeutic medical devices listed in Section 46 of this administrative regulation to be a physician who:

(a) Is certified in:

1. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;
2. Radiation oncology by the American Osteopathic Board of Radiology;
3. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology";
4. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a therapeutic medical device, supervised work experience, and supervised clinical experience as follows:

1. 200 hours of classroom and laboratory training that includes:
  - a. Radiation physics and instrumentation;
  - b. Radiation protection;
  - c. Mathematics pertaining to the use and measurement of radioactivity; and
  - d. Radiation biology;
2. 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:
  - a. Review of the full calibration measurements and periodic spot checks;
  - b. Preparing treatment plans and calculating treatment times;
  - c. Using administrative controls to prevent medical events;
  - d. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical device or console; and
  - e. Checking and using survey meters; and
3. Three (3) years of supervised clinical experience that includes one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:
  - a. Examining individuals and reviewing their case histories to determine their suitability for teletherapy, remote afterloader, or gamma stereotactic radiosurgery treatment, and any limitations or contraindications;
  - b. Selecting the proper dose and how it is to be administered;
  - c. Calculating the doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and
  - d. Postadministration follow up and review of case histories.

(11) The authorized medical physicist shall be an individual who:

(a) Is certified by the American Board of Radiology in:

1. Therapeutic radiological physics;

2. Roentgen ray and gamma ray physics;
3. X-ray and radium physics; or
4. Radiological physics; or

(b) Is certified by the American Board of Medical Physics in radiation oncology physics; or

(c) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one (1) year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a medical physicist at a medical institution that includes the tasks listed in Sections 24, 52, 53, 54, 55, 56, 57 and 58 of this administrative regulation as applicable.

(12) The authorized nuclear pharmacist to be a pharmacist who:

(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(b) 1. Has completed 700 hours in a structured educational program consisting of both:

- a. Didactic training in the following areas:
  - (i) Radiation physics and instrumentation;
  - (ii) Radiation protection;
  - (iii) Mathematics pertaining to the use and measurement of radioactivity;
  - (iv) Chemistry of radioactive material for medical use; and
  - (v) Radiation biology; and
- b. Supervised experience in a nuclear pharmacy involving the following:
  - (i) Shipping, receiving, and performing related radiation surveys;
  - (ii) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;
  - (iii) Calculating, assaying, and safely preparing dosages for patients or human research subjects;
  - (iv) Using administrative controls to avoid mistakes in the administration of radioactive material;
  - (v) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

2. Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

(13) An authorized experienced nuclear pharmacist must be a pharmacist who has completed a structured educational program as specified in subsection (12)(b)(1) of this section before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist shall not be required to comply with the requirements for a preceptor statement (subsection (12)(b)(2) of this section) and recentness of training (Section 63 of this administrative regulation) to qualify as an authorized nuclear pharmacist.

Section 79. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the licensee from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.]

JEFFREY D. HOWARD, JR., M.D., Commissioner  
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, November 13, 2018)**

**902 KAR 100:100. Licenses for industrial[Industrial] radiography and radiation safety requirements for industrial radiographic operations.**

RELATES TO: KRS 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 34, 42 U.S.C. 2011[-71, 21 C.F.R. 1020.40]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes radiation safety requirements for industrial radiographic operations and shall apply to licensees[or registrants] who use sources of radiation for industrial radiography.

Section 1. Definitions. (1) "Agreement state" means a state with which[that] the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1). (3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement state[Specific License and Registration Requirements for Industrial Radiography. (1) An Application for Radioactive Material License, incorporated by reference in 902 KAR 100:040, for a specific license or registration for the use of sources of radiation in industrial radiography shall be approved if the applicant meets the following requirements:

(a) Except as provided in subsection (3)(k) of this section, the applicant shall satisfy the general requirements specified in 902 KAR 100:040, Section 4, or 100:110 and 100:145, and any specific requirements contained in this administrative regulation.

(b) The applicant shall submit an adequate program for training a radiographer and a radiographers' assistant that meets the requirements of Section 14 of this administrative regulation.

1. An applicant shall not describe the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

2. From June 30, 2000, to June 30, 2002, an applicant shall affirm that an individual acting as an industrial radiographer shall be certified in radiation safety by a certifying entity as described in 10 C.F.R. Part 34, Appendix A, before commencing duty as a radiographer. This affirmation shall substitute for a description of the initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

(c) The applicant shall submit procedures for verifying and documenting the certification status of a radiographer and for ensuring that the certification of an individual acting as a radiographer remains valid.

(d) The applicant shall submit written operating and emergency procedures as described in Section 15 of this administrative regulation.

(e) The applicant shall submit a description of a program for inspections of the job performance of a radiographer and a radiographers' assistant at intervals not to exceed six (6) months as described in Section 14 of this administrative regulation.

(f) The applicant shall submit a description of the applicant's overall organization structure as it applies to the radiation safety

responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(g) The applicant shall identify and list the qualifications of the individual designated as the radiation safety officer (RSO) and of the potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with the procedures that have been submitted to the cabinet and have received approval pursuant to Sections 13 and 15 of this administrative regulation.

(h) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant shall describe the procedures for performing and the qualifications of the person authorized to do the leak testing.

(i) If the applicant intends to analyze the applicant's own wipe samples, the application shall include a description of the procedures to be followed, which shall include:

1. Instruments to be used;
2. Methods of performing the analysis; and
3. Pertinent experience of the person analyzing the wipe samples.

(j) If the applicant intends to perform an "in-house" calibration of a survey instrument, the applicant shall describe the method to be used and the relevant experience of the person performing the calibration. A calibration shall be performed according to the procedures and at the intervals prescribed in Section 5 of this administrative regulation.

(k) The applicant shall identify and describe the location of each field station and permanent radiographic installation.

(l) The applicant shall identify the location where records required by this and other administrative regulations in 902 KAR Chapter 100 shall be maintained.

(2) A licensee shall maintain a copy of its license, documents incorporated by reference, and amendments to these items until superseded by new documents approved by the cabinet or until the cabinet terminates the license].

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 34 except as established in subsections (1) through (4) of this section. (1) The licensee shall not be subject to the following:

- (a) 10 C.F.R. 34.5;
- (b) 10 C.F.R. 34.8;
- (c) 10 C.F.R. 34.11;
- (d) 10 C.F.R. 34.121; or
- (e) 10 C.F.R. 34.123.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission",[or] "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the NRC, or an agreement state.

(4) Notifications required by 10 C.F.R. 34.101 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 546-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.[Performance Provisions for Radiography Equipment. Equipment used in industrial radiographic operations shall meet the following criteria:

(1)(a) Except as provided in subsection (3)(k) of this section, a radiographic exposure device, source assembly, or sealed source and associated equipment shall meet the provisions specified in American National Standard Institute (ANSI) N432-1980, Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography; and

(b) Engineering analysis shall be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. If



upon review, the cabinet determines that the engineering analysis demonstrates that actual testing of the component is not necessary, the engineering analysis shall be an acceptable alternative.

(2)(a) A radiographic exposure device shall have attached to it by the user, a durable, legible, clearly visible label bearing the:

1. Chemical symbol and mass number of the radionuclide in the device;
2. Activity and date on which this activity was last measured;
3. Model or product code and serial number of the sealed source;
4. Manufacturer of the sealed source; and
5. Name, address, and telephone number of the licensee or registrant.

(b) A radiographic exposure device intended for use as a Type B transport container shall meet the applicable provisions of 10 C.F.R. 71.

(c) Modification of an exposure device, source changer, source assembly, or associated equipment shall be prohibited, unless the design of a replacement component, including source holder, source assembly, control, or guide tube, shall not compromise the design safety features of the system.

(3) In addition to the provisions specified in subsections (1) and (2) of this section, the following provisions shall apply to a radiographic exposure device, source assembly, and associated equipment that allow the source to be moved out of the device for radiographic operation or to a source changer:

(a) The coupling between the source assembly and the control cable shall be designed in a manner so that the source assembly cannot:

1. Become disconnected if cranked outside the guide tube; and
2. Be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(b) The device shall automatically secure the source assembly if it is cranked back into the fully shielded position within the device. The securing system shall be released only by a deliberate operation on the exposure device.

(c) Each outlet fitting, lock box, and drive cable fitting on a radiographic exposure device shall be equipped with a safety plug or cover, which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter.

(d) A sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment.

(e) The guide tube shall have passed:

1. A crushing test that closely approximates the crushing forces likely to be encountered during use; and
2. A kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(f) Guide tubes shall be used if moving the source out of the device.

(g) An exposure head or similar device designed to prevent the source assembly from passing out the end of the guide tube shall be attached to the outermost end of the guide tube during a radiographic operation.

(h) The guide tube exposure head connection shall withstand the tensile test for control units specified in ANSI N432-1980.

(i) A source changer shall provide a system for assuring that the source cannot be accidentally withdrawn from the changer if connecting or disconnecting the drive cable to or from a source assembly.

(j) A radiographic exposure device and associated equipment in use after January 10, 1996, shall comply with the provisions of this section.

(k) Equipment used in industrial radiography operations need not comply with paragraph 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiographic equipment can realistically exert on the lever or crankshaft of the drive mechanism.

~~Section 3. Limits on External Levels of Radiation for Radiographic Exposure Devices and Storage Containers. The maximum exposure rate limits for storage containers and source changers shall be:~~

~~(1) 200 millirems (2 millisieverts) per hour at any exterior surface; and~~

~~(2) Ten (10) millirems (0.1 millisieverts) per hour at one (1) meter from any exterior surface, with the sealed source in the shielded position.~~

~~Section 4. Locking of Radiographic Exposure Devices, Storage Containers, and Source Containers. (1) A radiographic exposure device shall have a lock or outer locked container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source from its shielded position.~~

~~(a) An exposure device or its container shall be kept locked, and if a keyed lock, with the key removed at all times except:~~

~~1. If under the direct surveillance of a radiographer or radiographer's assistant; or~~

~~2. As authorized by Section 19 of this administrative regulation.~~

~~(b) During radiographic operation the sealed source assembly shall be secured in the shielded position each time the source is returned to that position.~~

~~(c) A sealed source storage container and source changer shall be:~~

~~1. Provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; and~~

~~2. Kept locked, and if a keyed lock, with the key removed at all times if containing sealed sources, except if under the direct surveillance of a radiographer or radiographer's assistant.~~

~~(2) The control panel of a radiation machine shall be:~~

~~(a) Equipped with a lock that prevents the unauthorized use of an x-ray system or the accidental production of radiation; and~~

~~(b) Kept locked and the key removed at all times, except if under the direct visual surveillance of a radiographer or radiographer's assistant.~~

~~Section 5. Radiation Survey Instruments. (1) A licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at a location where a source of radiation is present in order to perform radiation surveys as required by this administrative regulation and 902 KAR 100.019, Section 12(1).~~

~~(2) A radiation survey instrument shall be calibrated:~~

~~(a) At intervals not to exceed six (6) months;~~

~~(b) After an instrument servicing, except for battery changes;~~

~~(c) 1. At two (2) points located approximately one-third (1/3) and two-thirds (2/3) of full-scale for linear scale instruments;~~

~~2. Midrange of each decade, and at two (2) points of at least one (1) decade for logarithmic scale instruments;~~

~~3. At three (3) points between two (2) and 1,000 millirems (90.02 and ten (10) millisieverts) per hour for digital instruments; and~~

~~(d) So that an accuracy within plus or minus twenty (20) percent of the calibration source can be demonstrated at the points checked.~~

~~(3) A record of each calibration shall be maintained for three (3) years after the calibration date for inspection by the cabinet.~~

~~(4) Instrumentation required by this section shall have a range so that two (2) millirems (0.02 millisieverts) per hour through one (1) rem (0.01 sievert) per hour may be measured.~~

~~Section 6. Leak Testing and Replacement of Sealed Sources. (1) The replacement of a sealed source fastened to or contained in a radiographic exposure device, and leak testing, repairing, opening, or modification of a sealed source shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state.~~

~~(2) A sealed source shall be tested for leakage:~~

~~(a) At intervals not to exceed six (6) months;~~

~~(b) Using a method approved by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state; and~~

~~(c) 1. By taking a wipe sample from the nearest accessible~~

point to the sealed source where contamination might accumulate.

2. The wipe sample shall be analyzed for radioactive contamination.

3. The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and

4. The analysis shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.

(3) A sealed source shall not be used by the licensee until tested for leakage, except if:

(a) The source is accompanied by a certificate from the transferor showing it to have been leak-tested within six (6) months preceding the transfer; or

(b) The source has been in storage and not in use for six (6) months or less.

(4)(a) A test conducted in accordance with subsections (1) and (2) of this section that reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking.

(b) The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with 902 KAR 100:021.

(c) The licensee shall file a report with the Manager, Radiation Health Branch, Department of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within five (5) days of a test with results that exceed the threshold in this subsection.

(d) The report shall describe the equipment involved, the test results, and the corrective action taken.

(5) An exposure device using depleted uranium (DU) shielding and an "S" tube configuration shall be tested for DU contamination at intervals not to exceed twelve (12) months.

(a) The analysis shall be:

1. Capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and

2. Performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform the analysis.

(b) If testing reveals the presence of 0.005 microcuries (185 Bq) or more of removable DU contamination, the exposure device shall be removed from use until an evaluation of the wear on the S-tube has been made.

(c) If the evaluation reveals that the S-tube is worn through, the device shall not be used again.

(d) A DU shielded device shall:

1. Not require testing for DU contamination while in storage and not in use; and

2. Require testing before use or transfer if the interval of storage exceeded twelve (12) months.

(6)(a) A licensee shall maintain records of leak test results for each sealed source or device containing DU.

(b) The results shall be stated in units of microcuries (becquerels).

(c) The licensee shall retain a record for three (3) years after it is made or until the source in storage is removed.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for each source of radiation and each device containing depleted uranium received or possessed in accordance with the license.

(2) Records of the inventories shall be maintained for three (3) years from the date of the inventory for inspection by the cabinet. The records of inventories shall include:

(a) Radionuclide;

(b) Number of curies (becquerels) or mass (for DU) in a device;

(c) Location of sealed sources and devices;

(d) Date of the inventory;

(e) Name of the individual making the inventory; and

(f) Manufacturer, model number, and serial number of each sealed source or device, as appropriate.

Section 8. Utilization Logs. A licensee or registrant shall maintain utilization logs, which shall be kept available for

inspection by the cabinet for three (3) years from the date of the recorded event, at the address specified in the license or on the registration, showing for a source of radiation the following information:

(1) A description including make, model, and serial number of the exposure device, radiation machine, or transport or storage container in which a sealed source is located;

(2) Identity and signature of the radiographer to whom assigned;

(3) Site or plant where used and dates of use;

(4) Date a source of radiation is removed from storage and returned to storage; and

(5) For permanent radiographic installations, the dates a radiation machine is energized.

Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Radiation Machines, Transport and Storage Containers, Associated Equipment, Source Changes, and Survey Instruments. (1) A licensee or registrant shall perform:

(a) Visual and operability checks on survey meters, radiographic exposure devices, radiation machines, transport and storage containers, associated equipment, and source changers before use on a day the equipment is to be used to ensure that the:

1. Equipment is in good working condition;

2. Source is adequately shielded; and

3. Required labeling is present; and

(b) An operability check of survey instruments using check sources or other appropriate means.

(2) If an equipment problem is found, the equipment shall be removed from service until repaired.

(3) A licensee or registrant shall have written procedures for:

(a) Inspection and routine maintenance of radiographic exposure devices, radiation machines, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed three (3) months, or before the first use in order to ensure the proper functioning of components important to safety;

(b) Inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials; and

(c) Inspection and maintenance program to assure that a Type B package is shipped and maintained in accordance with the certificate of compliance, or other approval.

(4) A replacement component shall meet design specifications.

(5) If an equipment problem is found, the equipment shall be removed from service until repaired.

(6)(a) A record of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments and of any maintenance performed in accordance with subsections (1) through (3) of this section shall be kept for three (3) years for inspection by the cabinet.

(b) The record shall include:

1. The date of check or inspection;

2. Name of the inspector;

3. Equipment involved;

4. Problems found; and

5. What repair and maintenance was done.

Section 10. Permanent Radiographic Installations. (1) Permanent radiographic installations with an entrance used for personnel access to a high radiation area shall have:

(a) Entrance controls of the type described in 902 KAR 100:019, Section 14(1)(b) and (c) and Section 14(2) that reduce the radiation level upon entry into the area; or

(b) Both visible and audible warning signals to warn of the presence of radiation.

1. The visible signal shall be activated by radiation if the source is exposed or the machine is energized.

2. The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed or the machine is energized.

(2)(a) The alarm system shall be tested for proper operation

with a radiation source at the beginning of each day before the installation is used for radiographic operations.

(b) The test shall include a check of the visible and audible signals.

(c) Each entrance control device that reduces the radiation level upon entry, as designated in subsection (1) of this section, shall be tested monthly.

(3)(a) If an entrance device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired within seven (7) calendar days.

(b) The facility may continue to be used during the seven (7) day repair period if the licensee:

1. Implements the continuous surveillance requirements of Section 19 of this administrative regulation; and
2. Uses an alarming ratemeter.

(4) Records of tests for entrance control and audible and visual alarms shall be maintained for inspection by the cabinet for three (3) years from the date of the test.

Section 11. Labeling, Storage, and Transportation. (1) A licensee shall not use a source changer or a container to store radioactive material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors (magenta, purple or black on a yellow background, having a minimum diameter of twenty-five (25) millimeters), and the following words:

- (a) 1. CAUTION\*; or
2. DANGER;
- (b) RADIOACTIVE MATERIAL; and
- (c) NOTIFY:

  1. CIVIL AUTHORITIES; or
  2. NAME OF COMPANY.

(2) The licensee shall not transport radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with 10 C.F.R. Part 71.

(3) A locked radiographic exposure device, radiation machine, or storage container shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store radioactive material in a manner that minimizes danger from explosion or fire.

(4) The licensee shall lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the radioactive material from the vehicle.

Section 12. Conducting Industrial Radiographic Operations. (1)(a) If radiography is performed at a location other than a permanent radiographic installation, the radiographer shall be accompanied by at least one (1) other qualified radiographer or an individual who has met the requirements of Section 14 of this administrative regulation. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry.

(b) Radiography shall not be performed unless more than one (1) qualified individual is present.

(2) A radiographic operation conducted at a location of use authorized on the license shall be conducted in a permanent radiographic installation, unless specifically authorized by the cabinet.

(3) A licensee shall have one (1) year from the effective date of June 27, 1998 to meet the requirement for having two (2) qualified individuals present at a location other than a permanent radiographic installation, as specified in subsection (1) of this section.

Section 13. Radiation Safety Officer for Industrial Radiography. The radiation safety officer (RSO) shall ensure that radiation safety is being performed in the daily operation of the licensee's program in accordance with approved procedures and regulatory requirements. (1) The minimum qualifications, training, and experience for RSOs for industrial radiography is as follows:

(a) Completion of the training and testing requirements of Section 14 of this administrative regulation;

(b) 2,000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

(2) The cabinet shall consider alternatives if the RSO has:

(a) Appropriate training or experience in the field of ionizing radiation; and

(b) Adequate formal training in establishing and maintaining a radiation safety protection program.

(3) The specific duties and authorities of the RSO shall include:

(a) Establishing and overseeing operating, emergency and ALARA procedures as required by 902 KAR 100:019, and reviewing them regularly to ensure that the procedures in use conform to current 902 KAR 100:019 procedures, and conform to other requirements in 902 KAR Chapter 100 and to the license conditions.

(b) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection is taught;

(c) Ensuring that:

1. Required radiation surveys and leak tests are performed and documented in accordance with 902 KAR Chapter 100, including corrective measures if levels of radiation exceed established limits;

2. Personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel;

3. Records are kept of the monitoring results;

4. Timely notifications are made as required by 902 KAR 100:019, Section 40; and

5. Operations are conducted safely; and

(d) Assuming control for instituting corrective actions including stopping of operations, if necessary.

(4) A licensee or registrant shall have two (2) years from the effective date of June 27, 1999 to meet the requirements of subsections (1) and (2) of this section.

Section 14. Training. (1) A licensee or registrant:

(a) Shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has received:

1. Formal training in the subjects identified in subsection (4) of this section;

2. At least two (2) months of on-the-job training; and

3. Is certified through a radiographer certification program in accordance with the criteria specified in Section 1 of this administrative regulation; or

(b) May, until two (2) years from the effective date of June 27, 1999, allow an individual who has not met the requirements of this section, to act as a radiographer if the individual has:

1. Received training in the subjects identified in subsection (4) of this section; and

2. Demonstrated an understanding of the subjects by successful completion of a written examination previously submitted to and approved by the cabinet;

(c) Shall not permit an individual to act as a radiographer until the individual has:

1. Received copies of and instructions in the following:

a. Provisions contained in this administrative regulation;

b. Provisions of 902 KAR 100:019, 100:040, 100:070, and 100:165;

c. Conditions of the license or registration certificate issued by the cabinet; and

d. The licensee's or registrant's approved operating and emergency procedures;

2. Demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material;

3. Received training in the:

a. Use of the licensee's sources of radiation, the registrant's radiation machine, and other radiation exposure devices;

b. Daily inspection of devices and associated equipment; and

c. Use of radiation survey instruments; and

4. Demonstrated an understanding of the use of radiographic

exposure devices, sources, survey instruments, and associated equipment described in paragraphs (a) and (c) of this subsection, by successful completion of a practical examination covering the material;

(d) Shall not permit an individual to act as a radiographer's assistant as defined in 902 KAR 100:040 until the individual has:

1. Received copies of and instructions in the following:

a. Provisions contained in this administrative regulation;

b. Requirements of 902 KAR 100:049, 100:040, 100:070, and 100:165;

c. Conditions of the license or registration certificate issued by the cabinet; and

d. The licensee's or registrant's operating and emergency procedures;

2. Demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, radiation machines, associated equipment, and radiation survey instruments that the assistant uses; and

3. Demonstrated:

a. Understanding of the instructions provided in paragraph (a) of this subsection by successfully completing a written test on the subjects covered; and

b. Competence in the use of hardware described in paragraph (b) of this subsection by successfully completing a practical examination on the use of the hardware; and

(e) Shall provide annual refresher safety training for a radiographer and radiographer's assistant at intervals not to exceed twelve (12) months.

(2)(a) Except in those operations in which a single individual shall serve as both radiographer and RSO and shall perform all radiography operations, the RSO or designee shall conduct an inspection program of the job performance of a radiographer and radiographer's assistant to ensure that 902 KAR Chapter 100, license requirements, and the applicant's operating and emergency procedures are followed.

(b) The inspection program shall include observation of the performance of the radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed six (6) months;

(c) If a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six (6) months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of subsection (3) of this section and the radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (1)(d)2 of this section by a practical examination before either person may next participate in a radiographic operation; and

(d) The cabinet shall consider alternatives in those situations in which the individual serves as both radiographer and RSO.

(3) Records of training specified in subsection (1)(c) of this section shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years after the record is made:

(a) Records shall include:

1. Radiographer certification documents;

2. Verification of certification status;

3. Copies of written tests;

4. Dates of oral tests and practical examinations;

5. Names of individuals conducting and receiving the oral and practical examinations; and

6. Documentation of annual refresher safety training and semi-annual inspections of job performance for a radiographer and a radiographer's assistant, which shall include:

a. Topics discussed during the refresher safety training;

b. Dates the annual refresher safety training was conducted; and

c. Names of the instructors and attendees.

(b) For inspections of job performance, the records shall also include a list showing the items checked and all noncompliances observed by the RSO.

(4) The licensee or registrant shall include the following subjects required in subsection (1)(b) of this section:

(a) Fundamentals of radiation safety including:

1. Characteristics of gamma radiation;

2. Units of radiation dose and quantity of radioactivity;

3. Hazards of exposure to radiation;

4. Levels of radiation from radioactive material; and

5. Methods of controlling radiation dose by time, distance, and shielding;

(b) Radiation detection instruments including:

1. Use, operation, calibration, and limitations of radiation survey instruments;

2. Survey techniques; and

3. Use of personnel monitoring equipment;

(c) Equipment to be used including:

1. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed);

2. Storage, control, and disposal of radioactive material;

3. Inspection and maintenance of equipment; and

4. Operation and control of radiation machines;

(d) The requirements of 902 KAR Chapter 100, as applicable; and

(e) Case histories of accidents in radiography.

(5) A licensee or registrant shall have one (1) year from June 27, 1998 to comply with the additional training requirements specified in subsections (1)(c) and (d) of this section.

(6) Licensees and registrants shall have one (1) year from June 27, 1999, to comply with the certification requirements specified in subsection (1) of this section. Records of radiographer certification maintained in accordance with subsection (3) of this section shall provide appropriate affirmation of certification requirements specified in subsection (1) of this section.

Section 15. Operating and Emergency Procedures. (1) A licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(a) The handling and use of sources of radiation to be employed so an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:049, Section 3;

(b) Methods and occasions for conducting radiation surveys;

(c) Methods for controlling access to radiographic areas;

(d) Methods and occasions for locking and securing a source of radiation, radiographic exposure device, or transport and storage container;

(e) Personnel monitoring and the use of personnel monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly;

(f) Transportation of sources of radiation to field locations, including:

1. Packing of a radiographic exposure device and storage container in a vehicle;

2. Placarding of a vehicle if needed; and

3. Control of sources of radiation during transportation;

(g) Minimizing exposure of individuals if an accident occurs;

(h) The procedure for notifying proper personnel if an accident occurs;

(i) Maintenance of records; and

(j) The inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, storage containers, survey instruments, and transport containers.

(2) The licensee or registrant shall maintain copies of current operating and emergency procedures until the cabinet terminates the license.

(3) Superseded material shall be retained for three (3) years after the change is made.

Section 16. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears on the trunk of the body a direct reading pocket dosimeter, an operating alarm ratemeter, and a personal dosimeter that is processed and evaluated by an

accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor.

(2) The wearing of an alarm ratemeter shall not be required for permanent radiography facilities in which another alarming or warning device is in routine use or during radiographic operations using radiation machines.

(3) Pocket dosimeters shall have a range from zero to at least 200 milliroentgens (two (2) millisieverts) and shall be recharged daily or at the start of a shift. Electronic personal dosimeters may be used in place of ion-chamber pocket dosimeters only.

(4) A personal dosimeter shall be assigned to, and worn by, only one (1) individual.

(5) A film badge shall be replaced each month, and other personal dosimeters processed and evaluated by an accredited NVLAP processor shall be replaced at intervals not to exceed three (3) months.

(6) After replacement, each personal dosimeter shall be processed as soon as possible.

(7) Direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters, shall be read and exposures recorded at the beginning and end of a shift.

(a) If an individual's pocket dosimeter is found to be off scale, or if the electronic personal dosimeter reads greater than 200 millirems (two (2) millisieverts), and the possibility of radiation exposure cannot be ruled out as the cause:

1. The individual's personal dosimeter shall be sent for processing within twenty-four (24) hours;

2. Radiographic operations by the individual shall cease; and

3. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made by the RSO or the RSO's designee. The results shall be included in the records maintained in accordance with paragraph (b) of this subsection and subsection (10)(b) of this section.

(b) A licensee or registrant shall maintain the following exposure records:

1. Direct reading dosimeter readings and yearly operability checks for three (3) years after the record is made;

2. Reports received from the NVLAP processor of personal dosimeter results until the cabinet terminates the license; and

3. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged personal dosimeters, until the cabinet terminates the license.

(8) If a personal dosimeter is lost or damaged, the worker shall cease work immediately until:

(a) A replacement personal dosimeter meeting the requirements of subsection (1) of this section is provided; and

(b) The exposure is calculated for the time period from issuance to loss or damage of the personal dosimeter. The results of the calculated exposure and the time period for which the personal dosimeter was lost or damaged shall be included in the records maintained in accordance with subsection (7) of this section.

(9)(a) Pocket dosimeters, or electronic personal dosimeters, shall be checked for correct response to radiation at periods not to exceed twelve (12) months.

(b) Acceptable dosimeters shall read within plus or minus twenty (20) percent of the true radiation exposure.

(10)(a) An alarm ratemeter shall:

1. Be checked to ensure that the audible alarm functions properly prior to use at the start of a shift;

2. Be set to give an alarm signal at a preset dose rate of 500 mR/hr (5mSv/hr);

3. Require special means to change the preset alarm functions;

4. Be calibrated at periods not to exceed twelve (12) months for correct response to radiation; and

5. Alarm within plus or minus twenty (20) percent of the true radiation dose rate.

(b) Records of alarm ratemeter calibrations shall be maintained for three (3) years after the record is made.

Section 17. Documents Required at Field Stations and Temporary Job Sites. A licensee or registrant shall have the

following records available for inspection by the cabinet at each field station, if applicable, and at each job site:

(1) A copy of the operating and emergency procedures;

(2) A current copy of the radioactive material license or registration certificate;

(3) A copy of 902 KAR 100:019, 100:100, and 100:165;

(4) Latest survey records required by Section 22 of this administrative regulation;

(5) Records of direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters readings, as required by Section 16 of this administrative regulation;

(6) Evidence of the latest instrument calibration of the radiation survey instrumentation in use at the site, as required by Section 5 of this administrative regulation;

(7) Utilization records for each radiographic exposure device dispatched from that location, as required by Section 8 of this administrative regulation;

(8) Records of equipment problems identified in daily checks of equipment required by Section 9 of this administrative regulation;

(9) Records of alarm system and entrance control checks required by Section 10 of this administrative regulation, if applicable;

(10) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and electronic personal dosimeters, as required by Section 16 of this administrative regulation;

(11) The shipping papers for the transportation of radioactive materials required by 902 KAR 100:070; and

(12) If operating in accordance with reciprocity pursuant to 902 KAR 100:065, a copy of the agreement state or U.S. Nuclear Regulatory Commission license authorizing the use of radioactive materials.

Section 18. Specific Provisions for Radiographic Personnel Performing Industrial Radiography. (1) At a job site, the following shall be supplied by a licensee or registrant:

(a) At least one (1) operable, calibrated survey instrument for every exposure device or radiation machine in use;

(b) A current whole body personnel monitor (TLD or film badge) for an individual performing radiographic operations;

(c) An operable, calibrated pocket dosimeter with a range of zero to 200 milliroentgens for a worker performing radiographic operations;

(d) Appropriate barrier ropes and signs; and

(e) An operable, calibrated, alarming ratemeter for every person performing radiographic operations using a radiographic exposure device.

(2) A radiographer at a job site shall have on the radiographer's person a valid certificate ID card issued by a certifying entity.

(3) An industrial radiographic operation shall not be performed if the items in subsections (1) and (2) of this section are not available at the job site or they are inoperable.

(4) During an inspection by the cabinet, the cabinet shall terminate an operation if items in subsections (1) and (2) of this section are not available or not operable, or if the required number of radiographic personnel are not present. Operations shall not be resumed until required conditions are met.

Section 19. Surveillance. During a radiographic operation, a radiographer or the other individual present, as required by Section 12 of this administrative regulation, shall maintain direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at a permanent radiographic installation where:

(1) Entryways are locked; and

(2) The requirements of Section 10 of this administrative regulation are met.

Section 20. Posting. (1) An area in which radiography is being performed shall be conspicuously posted, as required in 902 KAR 100:019, Section 24(1) and (2).

(2) Exceptions listed in 902 KAR 100:019 do not apply to an

industrial radiographic operation.

Section 21. Special Provisions and Exemptions for Cabinet X-ray Systems. (1) The use of a certified or certifiable cabinet x-ray system shall be exempt from the requirements of this administrative regulation, except for the following:

(a) For certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals:

1. A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.

2. A test for proper operation of interlocks shall be conducted and recorded at intervals not to exceed six (6) months.

3. A registrant shall perform an evaluation of the radiation dose limits to determine compliance with 902 KAR 100:049, Section 10, and 21 C.F.R. 1020.40, Cabinet X-ray Systems, at intervals not to exceed one (1) year.

4. Records shall be maintained demonstrating compliance with subsections (1)(a)1 and 2 of this section until disposal is authorized by the cabinet.

5. Records of the evaluation required by subparagraph 3 of this paragraph shall be maintained for two (2) years after the evaluation is performed.

(b)1. Certified cabinet x-ray systems shall be maintained in compliance with 21 C.F.R. 1020.40, Cabinet X-ray Systems.

2. A modification shall not be made to the system unless prior cabinet approval has been granted.

(2) An industrial use of a hand-held light intensified imaging device shall be exempt from the requirements of this administrative regulation if the dose rate eighteen (18) inches from the source of radiation to any individual does not exceed two (2) millirem per hour. A device exceeding this limit shall meet the applicable requirements of this administrative regulation and the licensing or registration requirements of 902 KAR 100:040 and 100:110, as applicable.

Section 22. Radiation Surveys and Survey Records. (1) A radiographic operation shall not be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this administrative regulation, is available and used at a location of radiographic operations.

(2) A survey with a radiation survey instrument shall be made after a radiographic exposure of the radiographic exposure device and the guide tube if approaching the device or guide tube to determine that the sealed source has been returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

(3) A survey shall be conducted of the radiographic exposure device with a calibrated radiation survey instrument if the source is exchanged and if a radiographic exposure device is placed in a storage area, to ensure that the source is in its shielded position.

(4) A physical radiation survey shall be made after a radiographic exposure using radiographic machines to determine that the machine is "off."

(5) Records shall be kept of the exposure device survey conducted before the device is placed in storage as specified in subsection (3) of this section if that survey is the last one performed in the workday. The records shall be maintained for inspection by the cabinet for three (3) years after it is made.

Section 23. Supervision of Radiographer's Assistant. (1) If a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, or conducts radiation surveys required by Section 22 of this administrative regulation to determine that the sealed source has returned to the shielded position after an exposure or the radiation machine is off, the radiographer's assistant shall be under the personal supervision of a radiographer.

(2) The radiographer shall:

(a) Be physically present at the site where a source of radiation and associated equipment is being used;

(b) Watch, by direct visual observation, the performance of the operations performed by the radiographer's assistant referred to in

this section; and

(c) Be in close proximity so that immediate assistance shall be given if required.

Section 24. Reporting Requirements. (1) In addition to the reporting requirements specified in 902 KAR 100:040, Section 15, and in accordance with other sections of this administrative regulation, a licensee or registrant shall provide a written report to the

Cabinet for Health and Family Services, Radiation Health Branch within thirty (30) days of the occurrence of the following incidents involving radiographic equipment:

(a) Unintentional disconnection of the source assembly from the control cable;

(b) Inability to retract the source assembly to its fully shielded position and secure it in this position;

(c) Failure of a component, critical to safe operation of the device, to properly perform its intended function;

(d) Failure of an indicator on a radiation machine to show that radiation is being produced;

(e) Failure of an exposure switch to terminate production of radiation if turned to the off position; or

(f) Failure of a safety interlock to terminate x-ray production.

(2) The licensee or registrant shall include the following information in a report submitted in accordance with subsection (1) of this section:

(a) A description of the equipment problem;

(b) Cause of an incident, if known;

(c) Manufacturer and model number of equipment involved in the incident;

(d) Place, time, and date of the incident;

(e) Actions taken to establish normal operations;

(f) Corrective actions taken or planned to prevent recurrence; and

(g) Qualifications of personnel involved in the incident.

(3) A report of an overexposure submitted under 902 KAR 100:049, Section 40, involving failure of a safety component of radiography equipment shall include the information specified in subsection (2) of this section.

(4) A licensee shall notify the cabinet if conducting radiographic operations or storing radioactive material at a location not listed on the license for a period in excess of 180 days in a calendar year.

Section 25. Incorporation by Reference. (1) The American National Standard Institute (ANSI) N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography", published in NBS Handbook 136, issued January 1981, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Office of the Commissioner, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.]

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, November 13, 2018)**

**902 KAR 100:142. Licenses and radiation safety requirements for well logging[Wire line service operations].**

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-



211.852, 211.990(4), 10 C.F.R. Part 39, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194.050(1), 211.090(3), 211.844(1)[, 10 C.F.R. 39]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides the requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well.[radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration, and subsurface tracer studies].

Section 1. Definitions. (1) "Agreement state" means a state with which[that] the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state[Agreement with Well Owner or Operator. (1) A licensee shall not perform a wire line service operation with a sealed source in a well or well bore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator or well or land owner that:

(a) If a sealed source is lodged downhole, a reasonable effort at recovery shall be made;

(b) If a decision is made to abandon the sealed source downhole, the requirements of this administrative regulation shall be met;

(c) A person shall not attempt to recover a sealed source in a manner, which, in the licensee's opinion, may result in its rupture;

(d) The radiation monitoring required in Section 24 of this administrative regulation shall be performed;

(e) If the environment, equipment, or personnel are contaminated with radioactive material, decontamination shall be performed prior to release from the site or for unrestricted use; and

(f) If the sealed source is classified as not retrievable after reasonable efforts at recovery have been expended, the requirements of Section 27 of this administrative regulation shall be met.

(2) The licensee shall retain a copy of the written agreement with the well operator or well or land owner for three (3) years after completion of the well logging operations].

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 39 except as established in subsections (1) through (3) of this section.

(1) The licensee shall not be subject to the following:

(a) 10 C.F.R. 39.5;

(b) 10 C.F.R. 39.8;

(c) 10 C.F.R. 39.11;

(d) 10 C.F.R. 39.101; or

(e) 10 C.F.R. 39.103.

(2) Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the "Commission",[or] "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the NRC, or an agreement

state.

(4) Notifications required by 10 C.F.R. 39.77 shall be directed to the manager, Radiation Health Branch, at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502)564-1492: Facsimile;

(c) (502)564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(d) (800)255-2587: Telephone, for hours outside of those in paragraph (c).[Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in a manner that the requirements of 902 KAR 100:019 and 100:070 shall be met.

Section 3. Storage Precautions. (1) Sources of radiation, except accelerators, shall be provided with a lockable storage or transport container.

(2) The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(3) Sources of radiation shall be stored in a manner that shall minimize the danger from explosion or fire.

Section 4. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

Section 5. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments, capable of detecting beta and gamma radiation, at each field station and temporary jobsite to make physical radiation surveys as required by this administrative regulation and by 902 KAR 100:019.

(2)(a) Instrumentation required by this section shall be capable of measuring one-tenth (0.1) millirem (.001 mSv) per hour through at least fifty (50) millirem (0.5 mSv) per hour.

(b) The licensee shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee shall own the instruments or have a procedure to obtain them as soon as possible from a second party.

(3) The licensee shall have each radiation survey instrument required by subsection (1) and (2) of this section calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) So that accuracy within plus or minus twenty (20) percent of the true radiation level shall be demonstrated on each scale.

(4) Records of calibration shall be maintained for a period of at least three (3) years after the date of calibration for inspection by the cabinet.

Section 6. Leak Testing of Sealed Sources. (1) A licensee who uses a sealed source of radioactive material shall have the source tested for leakage as specified in this section. The licensee shall keep a record of leak test results in units of microcuries and retain the record for inspection by the cabinet.

(2) Method of Testing.

(a) The wipe of a sealed source shall be performed using a leak test kit or method approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state;

(b) The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate;

(c) The wipe sample shall be analyzed for radioactive contamination; and

(d) The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and shall be performed by a person approved by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state, as established in 10 C.F.R. Part 39.35.

(3) Test Frequency.

(a) Each sealed source, except an Energy Compensation

Source (ECS), shall be tested at intervals not to exceed six (6) months;

(b) In the absence of a certificate from a transferor that a test has been made within the six (6) months before the transfer, the sealed source shall not be used until tested.

(4)(a) Each ECS, not exempted by subsection (7) of this section, shall be tested at intervals not to exceed three (3) years. In the absence of a certificate from a transferor that a test has been made with the three (3) years before the transfer, the ECS shall not be used until tested.

(5) Removal from service:

(a) If the test conducted under subsections (1) and (2) of this section reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee authorized to perform these functions;

(b) The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a cabinet, U.S. Nuclear Regulatory Commission, or agreement state licensee that is authorized to perform these functions.

(6) The licensee shall submit a report to the cabinet within five (5) days of receiving the test results, and the report shall describe the equipment involved in the leak, the test results, contamination that resulted from the leaking source, and the corrective actions taken up to the time that report is made.

(7) The following sealed sources shall be exempt from the periodic leak test requirements in subsections (1) through (5) of this section:

(a) Hydrogen-3 (tritium) sources;

(b) Sources containing radioactive material with a half-life of thirty (30) days or less;

(c) Sealed sources containing radioactive material in gaseous form;

(d) Sources of beta or gamma-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less; and

(e) Sources of alpha or neutron-emitting radioactive material with an activity of ten (10) microcuries (0.37 Bq) or less.

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for sources of radiation received or possessed by the licensee or registrant.

(2) Records of inventories shall be maintained for at least two (2) years from the date of the inventory for inspection by the cabinet and shall include:

(a) The quantities and kinds of sources of radiation;

(b) The location where sources of radiation are assigned;

(c) The date of the inventory; and

(d) The name of the individual conducting the inventory.

Section 8. Utilization Records. A licensee or registrant shall maintain current records, which shall be kept available for inspection by the cabinet for at least two (2) years from the date of the recorded event showing the following information for each source of radiation:

(1) A description (or make and model number or serial number) of each source of radiation used;

(2) The identity of the logging supervisor responsible for the radioactive material and identity of logging assistant present;

(3) Locations where used and dates of use; and

(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the radionuclide and activity used at a particular well site.

Section 9. Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) A sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:

(a) Be of double encapsulated construction;

(b) Contain radioactive material whose chemical and physical

form shall be as insoluble and nondispersible as practicable; and

(c) Meets the requirements of paragraphs (2), (3), and (4) of this section.

(2) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source in well logging applications if it meets the requirements of USASI N5.10-1968, Classification of Sealed Radioactive Sources, or the requirements in subsections (3) or (4) of this section.

(3) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if it meets the oil well logging requirements of ANSI/HPS N43.6-1997, Sealed Radioactive Sources — Classification.

(4) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(a) Temperature. The test source shall be held at minus forty (40) degrees Centigrade for twenty (20) minutes, 600 degrees Centigrade for one (1) hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees Centigrade to twenty (20) degrees Centigrade within fifteen (15) seconds;

(b) Impact test. A five (5) kilogram steel hammer, two and five-tenths (2.5) centimeters in diameter, shall be dropped from a height of one (1) meter onto the test source;

(c) Vibration test. The test source shall be subject to a vibration from twenty-five (25) Hz to 500 Hz at five (5) g amplitude for thirty (30) minutes;

(d) Puncture test. A one (1) gram hammer and pin, three-tenths (0.3) centimeter in diameter, shall be dropped from a height of one (1) meter onto the test source.

(e) Pressure Test. The test source shall be subject to an external pressure of  $1.695 \times 10^7$  pascals (24,600 pounds per square inch absolute).

(5) The requirements in subsections (1) through (4) of this section shall not apply to sealed sources that contain radioactive material in gaseous form.

(6) The requirements in subsections (1) through (4) of this section shall not apply to ECS sources, which shall be registered with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state.

(7) Certification documents shall be maintained for inspection by the cabinet for a period of at least two (2) years after source disposal.

(8) For sources abandoned downhole, certification documents shall be maintained until their disposal is authorized by the cabinet.

Section 10. Labeling. (1) A source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label that has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE.

(2) This labeling shall be on the smallest component, for example, source, source holder, or logging tool, that is transported as a separate piece of equipment.

(3) A transport container shall have permanently attached to it a durable legible and clearly visible label that has, at a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.

Section 11. Inspection and Maintenance. (1) A licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools to assure proper labeling, operation, and physical condition.

(2) Records of inspection and maintenance shall be maintained for a period of at least two (2) years for inspection by the cabinet.

(3) If an inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been

made.

(4) The repair, opening, or other modification of a sealed source shall be performed only by persons specifically authorized to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.

(5) If a sealed source is stuck in the source holder, the licensee shall not perform any operation, for example drilling, cutting, or chiseling on the source holder unless the licensee is specifically licensed by the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state to perform the operation.

Section 12. Training Requirements. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor until the individual has:

(a) Completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission covering the subjects outlined in Section 28 of this administrative regulation and shall have demonstrated an understanding of the subjects;

(b) Received copies of and demonstrated an understanding of the following:

1. The requirements contained in this administrative regulation;
2. Provisions of 902 KAR Chapter 100;
3. The conditions of the license or registration certificate issued by the cabinet; and
4. The licensee's or registrant's approved operating and emergency procedures;

(c) Completed on-the-job training and demonstrated competence in the use of sources of radiation, related handling tools, and radiation survey instruments that shall be employed in his assignment; and

(d) Demonstrated an understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written test.

(2) A licensee or registrant shall not permit an individual to act as a logging assistant until the individual has:

(a) Read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this administrative regulation and other applicable provisions of 902 KAR Chapter 100 and shall have demonstrated understanding of the subjects;

(b) Demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that will be employed in his assignment; and

(c) Demonstrated understanding of the requirements in paragraphs (a) and (b) of this subsection by successfully completing a written or oral test.

(3) A licensee or registrant shall maintain employee training records for inspection by the cabinet for at least two (2) years following termination of employment.

Section 13. Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed so that an individual is not likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:019, Section 3;

(2) The handling and use of radioactive material including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(3) The use of remote handling tools for handling sealed source and radioactive tracer material except low-activity calibration sources;

(4) Methods and occasions for conducting radiation surveys, including surveys for detecting contamination;

(5) Methods and occasions for locking and securing sources of radiation;

(6) Personnel monitoring and the use of personnel monitoring equipment;

(7) Transportation to temporary job sites and field stations, including:

(a) Packaging of sources of radiation in the vehicles;

(b) Placarding of vehicles, if needed; and

(c) Physically securing sources of radiation during transportation to prevent accidental loss, tampering, or unauthorized removal;

(8) Minimizing exposures of individuals from inhalation and ingestion of radioactive tracer material;

(9) The procedure for notifying proper personnel if an accident occurs;

(10) Maintenance of records, including records generated by logging personnel at temporary jobsites;

(11) The inspection of sealed sources;

(12) The inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, uranium sinker bars, and injection tools;

(13) The procedures that shall be followed if a sealed source is lodged downhole;

(14) Picking up, receiving, and opening packages containing radioactive material;

(15) Decontamination of the environment, equipment, and personnel if tracers are used; and

(16) Actions to be taken if a sealed source is ruptured or a sealed source is lodged in a well, including steps to:

(a) Prevent the spread of contamination;

(b) Minimize inhalation and ingestion of radioactive material; and

(c) Obtain suitable radiation survey instruments as required by Section 5 of this administrative regulation.

Section 14. Personnel Monitoring. (1) A licensee or registrant shall not permit an individual to act as a logging supervisor or logging assistant unless the individual wears, at all times during well service operations utilizing sources of radiation, a personal dosimeter that is processed and evaluated by an accredited NVLAP processor.

(2) A personal dosimeter shall be assigned to and worn by only one (1) individual.

(3) Film badges shall be replaced monthly and other personal dosimeters replaced at least quarterly.

(4) After replacement, a personal dosimeter shall be promptly processed.

(5) Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes disposal.

Section 15. Security. During logging or tracer applications, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 16. Handling Tools. The licensee shall provide and require the use of tools that shall assure remote handling of sealed sources other than low activity calibration sources.

Section 17. Tracer Studies. (1) Protective gloves and other protective clothing shall be used by personnel handling radioactive tracer material.

(2) Care shall be taken to avoid ingestion or inhalation of radioactive material.

(3) A licensee shall not permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.

Section 18. Uranium Sinker Bars. The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION – RADIOACTIVE – DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

Section 19. Energy Compensation Source (ECS). (1) The licensee may use an energy compensation source which is contained within a logging tool, or other tool components, only if the ECS contains quantities of radioactive material not exceeding 100 microcuries (3.7 MBq).

(2) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Sections 6, 7, and 8.

(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the energy compensation source is only subject to the requirements of Sections 1, 6, 7, 8, 20, and 27.

~~Section 20. Use of a Sealed Source in a Well Without a Surface Casing. A licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure, approved by the Cabinet, for reducing the probability of the source becoming lodged in the well.~~

~~Section 21. Particle Accelerators. A licensee or registrant shall not permit above ground testing of particle accelerators if the testing will result in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:019 shall be met.~~

~~Section 22. Tritium Neutron Generator Target Source. (1) Use of a tritium neutron generator target source, containing quantities not exceeding thirty (30) curies (1,110 GBq) and in a well with a surface casing to protect fresh water aquifers shall be as established in this administrative regulation, except Sections 1, 9, and 27 of this administrative regulation.~~

~~(2) Use of a tritium neutron generator target source, containing quantities exceeding thirty (30) curies (1,110 GBq) or in a well without a surface casing to protect fresh water aquifers shall be as established in this administrative regulation, except Section 9 of this administrative regulation.~~

~~Section 23. Radiation Surveys. (1) A radiation survey shall be made and recorded for each area where radioactive materials are stored and used.~~

~~(2) A radiation survey shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials.~~

~~(3) Each survey shall include each source of radiation and combination of sources of radiation transported in the vehicle.~~

~~(4) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.~~

~~(5) A radiation survey shall be made and recorded at the job site or well head for tracer operations, except for those using hydrogen-3, carbon-14, and sulfur-35.~~

~~(6) Each survey shall include radiation levels prior to and after the operation.~~

~~(7) Records required pursuant to this section shall include:~~

~~(a) The dates;~~

~~(b) The identification of the individual making the survey;~~

~~(c) Identification of survey instrument used; and~~

~~(d) An exact description of the location of the survey.~~

~~(8) Each survey record shall be maintained for inspection by the cabinet for at least two (2) years after completion of the survey.~~

~~Section 24. Radioactive Contamination Control. (1) If the licensee has reason to believe that, as a result of an operation involving a sealed source, the encapsulation of the sealed source may be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.~~

~~(2) If the licensee detects evidence that a sealed source has ruptured or radioactive materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by Section 13 of this administrative regulation.~~

~~(3) If contamination results from the use of radioactive material in well logging, the licensee shall decontaminate work areas, equipment, and unrestricted areas.~~

~~(4) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with a radiation detector capable of detecting the radioactive material, the circulating fluids~~

~~from the well, if present, to check for contamination resulting from damage to the sealed source.~~

~~Section 25. Records Required at Field Stations. A licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:~~

~~(1) Appropriate license or certificate of registration;~~

~~(2) Operating and emergency procedures;~~

~~(3) A copy of 902 KAR 100:019, 100:142, and 100:165;~~

~~(4) Survey records required pursuant to Section 23 of this administrative regulation;~~

~~(5) Quarterly inventories required pursuant to Section 7 of this administrative regulation;~~

~~(6) Utilization records required pursuant to Section 8 of this administrative regulation;~~

~~(7) Records of inspection and maintenance required pursuant to Section 11 of this administrative regulation;~~

~~(8) Records of the latest survey instrument calibration pursuant to Section 5 of this administrative regulation;~~

~~(9) Records of the latest leak test results pursuant to Section 6 of this administrative regulation; and~~

~~(10) Training records required by Section 12 of this administrative regulation.~~

~~Section 26. Records Required at Temporary Job Sites. (1) A licensee or registrant conducting a well service operation at a temporary job site shall have the following records available at that site for inspection by the cabinet:~~

~~(a) Operating and emergency procedures;~~

~~(b) Survey records required pursuant to Section 23 of this administrative regulation for the period of operation at the site;~~

~~(c) Evidence of current calibration for the radiation survey instruments in use at the site; and~~

~~(d) The shipping papers for the transportation of radioactive materials.~~

~~(2) In addition to the record requirements of this section, at each temporary job site where a well service operation is conducted under cabinet authorization granted pursuant to 902 KAR 100:065, a licensee or registrant shall have the following records available for inspection by the cabinet:~~

~~(a) Current leak test records for the sealed sources in use at the site;~~

~~(b) The appropriate license and certification of registration or equivalent document; and~~

~~(c) Shipping papers for the transport of radioactive material.~~

~~Section 27. Notification of Incidents and Lost Sources. (1) If the licensee knows or has reason to believe that a sealed source has been ruptured, the licensee shall:~~

~~(a) Immediately notify by telephone the Cabinet for Health and Family Services, Radiation Health Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and~~

~~(b) Within thirty (30) days, notify by confirmatory letter to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621. The letter shall:~~

~~1. Designate the well or other location;~~

~~2. Describe the magnitude and extent of the escape of radioactive materials;~~

~~3. Assess the consequences of the rupture; and~~

~~4. Explain efforts planned or being taken to mitigate these consequences.~~

~~(2) The licensee shall notify the Cabinet for Health and Family Services, Radiation Health Branch of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by 902 KAR 100:019, Sections 38, 39, and 40 and 100:040, Section 15.~~

~~(3) If a sealed source or device containing radioactive material is lodged in a well and it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall:~~

~~(a) Notify the Cabinet for Health and Family Services,~~

Radiation Health Branch, immediately by telephone at (502) 564-3700 from 8 a.m. – 4:30 p.m., Monday through Friday or at (800) 255-2587 at other hours of the circumstances that resulted in the inability to retrieve the source and obtain cabinet approval to implement abandonment procedures; or

(b) That the licensee implemented abandonment before receiving cabinet approval because the licensee believed there was an immediate threat to public health and safety.

(4) If it becomes apparent that efforts to recover the radioactive source shall not be successful, the licensee shall:

(a) Advise the well owner or well operator of the requirements of this administrative regulation regarding abandonment and an appropriate method of abandonment, which shall include:

1. The immobilization and sealing in place of the radioactive source with a cement plug;

2. A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and

3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well, unless the mounting of the plaque is not practical;

(b) Either ensure that abandonment procedures are implemented within thirty (30) days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures; and

(c) File a written report on the abandonment with the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) days after a sealed source has been classified as irretrievable. The report shall be sent to each appropriate state or federal agency that issued permits or approved of the drilling operation and shall include the following information:

1. Date of occurrence and a brief description of attempts to recover the source;

2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

3. Surface location and identification of well;

4. Results of efforts to immobilize and seal the source in place;

5. A brief description of the attempted recovery effort;

6. Depth of the radioactive source;

7. Depth of the top of the cement plug;

8. Depth of the well;

9. The immediate threat to public health and safety justification for implementing abandonment if prior cabinet approval was not obtained in accordance with subsection (6) of this section;

10. Information such as a warning statement, contained on the permanent identification plaque; and

11. State and federal agencies receiving a copy of this report.

(5) If a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque mounted at the surface of the well. This plaque shall:

(a) Be constructed of long-lasting material, such as stainless steel, brass, bronze, or Monel. The size of the plaque shall be at least seven (7) inch, seventeen (17) cm square and one-eighth (1/8) inch (3mm) thick. Letter size of the word "Caution" shall be approximately twice the letter size of the rest of the information, for example, one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively; and

(b) Contain the following engraved information on its face:

1. The word "Caution;"

2. The radiation symbol (color not required);

3. The date of abandonment;

4. The name of the well operator or well owner;

5. The well name and well identification number or other designation;

6. The sealed source by radionuclide and quantity of activity;

7. The source depth and the depth to the top of the plug;

8. An appropriate warning, depending on the specific circumstances of an abandonment, for example, "Do not drill below plug depth;" or "Do not enlarge casing;" and

9. The words "Do not reenter hole before contacting Radiation Health Branch, Kentucky Cabinet for Health and Family Services."

(6) If the licensee knows or has reason to believe that

radioactive material has been lost in or to an underground potable water source, the licensee shall:

(a) Immediately notify the Cabinet for Health and Family Services, Radiation Health Branch by telephone at (502) 564-3700 from 8 a.m. – 4:30 p.m. Monday through Friday or at (800) 255-2587 at other hours; and

(b) Confirm by letter, within thirty (30) days, to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621.

(7) The notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planned or being taken to mitigate consequences.

Section 28. Minimum Training Requirements for Logging Supervisors. Logging supervisors shall receive minimum training in the following areas:

(1) Fundamentals of radiation safety:

(a) Characteristics of gamma, neutron, and x-radiation;

(b) Units of radiation dose (mrem);

(c) Quantity of radioactivity (curie);

(d) Significance of radiation dose:

1. Radiation protection standards; and

2. Biological effects of radiation dose;

(e) Levels of radiation from sources of radiation;

(f) Methods of controlling radiation dose:

1. Working time;

2. Working distance; and

3. Shielding; and

(g) Radiation safety practices including prevention of contamination and methods of decontamination;

(2) Radiation detection instrumentation to be used:

(a) Use of radiation survey instruments:

1. Operation;

2. Calibration; and

3. Limitations;

(b) Survey techniques; and

(c) Use of personnel monitoring equipment;

(3) Equipment to be used:

(a) Remote handling equipment;

(b) Sources of radiation;

(c) Storage and transport containers; and

(d) Operation and control of equipment;

(4) The requirements of 40 C.F.R. Part 39 and 902 KAR Chapter 100;

(5) The licensee's or registrant's written operating and emergency procedures;

(6) The licensee's or registrant's recordkeeping procedures; and

(7) Case histories of well logging accidents.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "USASI N5.10-1968, Classification of Sealed Radioactive Sources", 1968; and

(b) "ANSI/HPS N43.6-1997, "Sealed Radioactive Sources – Classification", 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.]

JEFFREY D. HOWARD, JR., M.D., Commissioner  
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, November 13, 2018)**

**907 KAR 1:025. Payment for ~~nursing facility~~ services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.**

RELATES TO: KRS 142.363, 42 C.F.R. ~~413.9, 413.17, 413.85, 413.90, 413.94, 413.98, 413.106, 413.153, 435.1010, 447.272, 483.10, 42 U.S.C. 1395x, 1396a, 1396d~~ [Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 U.S.C. 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s]

STATUTORY AUTHORITY: KRS 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

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 ~~for the provision of medical assistance to Kentucky's indigent citizenry~~. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with an intellectual ~~mental retardation or a developmental~~ disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

Section 1. Definitions. (1) "Allowable cost" means that portion of a facility's cost ~~that is~~ which may be allowed by the department in establishing the reimbursement rate.

(2) "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for individuals with an intellectual ~~mental retardation or a developmental~~ disability (ICF-IID); or

- (b) A nursing facility certified as:
  - 1. A dually-licensed pediatric facility; or
  - 2. An institution for mental diseases.

(3) "Cost-based facility" means a facility ~~that~~ which:

(a) The department ~~reimburses~~ shall reimburse for all allowable costs; and

- (b) Is either:
  - 1. A dually-licensed pediatric facility;
  - 2. An intermediate care facility for individuals with an intellectual ~~mental retardation or a developmental~~ disability; or
  - 3. An institution for mental diseases.

(4) "Cost report" means Cost-based Facility Reimbursement Cost Report Instructions and Cost-based Facility Reimbursement Cost Report.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) **"Dually-licensed pediatric facility" means any facility providing both high intensity and low intensity nursing facility services to children under age twenty-one (21) only in the same beds.**

(7) ~~"IHS Markit Index [Global Insight Index]"~~ means an indication of changes in health care costs from year to year developed by IHS Markit, or its successor organization ~~[Global Insights Index]~~.

(8) ~~(7) "Institution for mental diseases" or "IMD" is defined by 42 C.F.R. 435.1010 means an institution for mental diseases, excluding psychiatric hospitals.~~

**(9) "Intermediate care facility for individuals with an intellectual disability" or "ICF-IID" is defined by KRS 202B.010(10).**

~~(10) (8) "Nursing facility" or "NF" means that:~~

- (a) The state survey agency has:

1. Granted an NF license to ~~the~~ a facility; and
2. Recommended the NF to the department for certification as a Medicaid provider; and
- (b) The department has granted certification for Medicaid participation to the NF.

~~(11) (9) "Nursing facility with an all-inclusive rate unit" means:~~

~~(a) A nursing facility with a distinct part ventilator unit; or~~

~~(b) A nursing facility with a distinct part brain injury unit.~~

~~(12) (10) "Occupancy factor" means a percentage representing:~~

- (a) A facility's actual occupancy level; or

(b) A minimum occupancy level assigned to a facility if its occupancy level is below the minimum level established in Section 3(17) of this administrative regulation.

~~(13) (11) (10) "Prospective rate" means a payment rate for routine services based on allowable costs and other factors that~~ which, except as specified in Section 3 of this administrative regulation, shall not be retroactively adjusted, either in favor of the facility or the department.

~~(14) (12) (11) "Routine services" means services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(f)(11)(i)(c)(8)(ii).~~

~~(15) (13) (12) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health~~ Long-term Care.

~~(16) (14) (13) "Upper payment limit" means the aggregate payment amount as described in 42 C.F.R. 447.272 for inpatient services furnished by state-owned or operated ICF-IIDs.~~

Section 2. Certified Bed Requirements. Except for an intermediate care facility for individuals with an intellectual ~~mental retardation or a developmental~~ disability or a nursing facility with an all-inclusive rate unit, a facility ~~that~~ which **provides services pursuant to this administrative regulation and** desires to participate in the Medicaid Program shall comply with the following requirements:

(1) If the facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program; or

(2) If the facility has ten (10) or more beds, the facility shall ~~it shall be required to~~ have the greater of:

- (a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or
- (b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program.

Section 3. Payment System for a Cost-based Facility. The department's reimbursement system shall include the specific policies, components, or principles established in this section. (1) Except as specified in this section, prospective payment rates for routine services shall:

1. Be set by the department on a facility-specific basis; ~~and~~
2. ~~shall~~ Not be subject to retroactive adjustment ~~[except as specified in this section of this administrative regulation]~~.

(b) Prospective rates shall be determined on a cost basis annually, and may be revised on an interim basis by the department.

(c) An adjustment to a prospective rate (subject to the maximum payment for that type of facility) shall be considered if:

1. The facility's increased costs are attributable to:
  - a. A governmentally imposed minimum wage increase, staffing ratio increase, or a level of service increase; and
  - b. The increase was not included in the IHS Markit ~~[Global Insight]~~ Index;
2. A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all facilities within the class; or
3. The facility experiences a governmentally-imposed displacement of residents.

(d) 1. The amount of any prospective rate adjustment resulting from a governmentally-imposed minimum wage increase or licensure requirement change or interpretation as cited in paragraph (c) ~~2~~ (2) of this subsection ~~[of this paragraph]~~ shall not



exceed the amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into the following two (2) general areas:

- a. Salaries; and
- b. Other.

2. The effective date of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The state shall set a uniform rate year for a cost-based facility (July 1 - June 30) by taking the latest available cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate based on a cost report ~~that~~which has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

(b) Partial year~~;~~ or budget cost data shall be used if a full year's ~~data~~date is unavailable. Unaudited reports shall be subject to an adjustment to the audited amount.

(c) Other factors relating to costs.

1. If the department has made a separate rate adjustment as compensation to a facility for a minimum wage update, the department shall:

- a. Not pay the facility twice for the same costs; and
- b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment.

2. If the trending and indexing factors include costs related to a minimum wage increase:

- a. The department shall not make a separate rate adjustment; and
- b. The minimum wage costs shall not be deleted from the trending and indexing factors.

3. The maximum payment amounts for the prospective universal rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

4. For purposes of administrative ease in computations, normal rounding shall be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents.

(3)(a) Except as provided in paragraph (b) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 C.F.R. 413.153 and if the interest expense:

1. Represents interest on:

- a. Long term debt existing at the time the provider enters the program; or
- b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.

(i) If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and

(ii) The form of indebtedness may include mortgages, bonds, notes, and debentures if the principal is to be repaid over a period in excess of one (1) year; or

2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances, and various types of receivable financing.

(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(4) The allowable cost for a service or good purchased by a facility from a related organization shall be the cost to the related organization, unless it ~~is~~can be demonstrated that the related organization is equivalent to a second party supplier.

(a) Except as provided in paragraph (b) of this subsection, an organization shall be considered a related organization if an

individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.

(b) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(5)(a) Except as provided in paragraph (b) of this subsection, the amount allowable for leasing costs shall not exceed the amount ~~that~~which would be allowable based on the computation of historical costs.

(b) The department shall determine the allowable costs of an arrangement based on the costs of the original lease agreement if:

1. A cost-based facility entered into a lease arrangement as an intermediate care facility prior to April 22, 1976;

2. An intermediate care facility for individuals with an intellectual~~mental retardation or a developmental~~ disability entered into a lease arrangement prior to February 23, 1977; or

3. A nursing facility entered into a lease arrangement as a skilled nursing facility prior to December 1, 1979.

(6) A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of the provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(7) The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413.90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98;

(f) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method;

(g) Interest on current and capital indebtedness; or

(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

(8) The following shall not be allowable costs:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;

(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences, or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the~~following~~ methods established in this subsection shall be used for changes of ownership occurring before July 18, 1984~~;~~:

(a)1.~~Determine~~ The actual gain on the sale of the facility shall be determined; and

2. There shall be added~~Add~~ to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis~~;~~:

(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price~~;~~:

(c) A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value. A lease purchase agreement or other similar arrangement ~~that~~which does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is transferred~~;~~and]

(d) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (c) of this subsection.

(10) Valuation of capital assets.

(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for a change~~[changes]~~ of ownership occurring after July 18, 1984 and before October 1, 1985.

(b) For a bona fide change~~[changes]~~ of ownership entered into on or after October 1, 1985, the depreciation and interest costs shall be increased in valuation in accordance with 42 U.S.C. 1395x(v)(1)(O)(i).

(11)(a) A facility shall maintain and make available any records and data necessary to justify and document:

1. Costs to the facility; and
2. Services performed by the facility~~;~~and]

(b) The department shall have unlimited on-site access to all of a facility's fiscal and service records for the purpose of:

1. Accounting;
2. Auditing;
3. Medical review;
4. Utilization control; and
5. Program planning.

(12) ~~The requirements established in this subsection~~[following] shall apply to an annual cost report~~;~~]

(a) A year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts~~;~~]

(b) A new item or expansion representing a departure from current service levels for which the facility requests prior approval by the department shall be so indicated with a description and rationale as a supplement to the cost report~~;~~]

(c) Department approval or rejection of a projection or expansion shall be made on a prospective basis in the context that, if an expansion and related costs are approved, they shall be considered when actually incurred as an allowable cost. Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection~~;~~and]

(d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13)(a) The department shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of an audit in relation to routine and ancillary service cost~~;~~]

(b) If a field audit is not determined to be necessary, the cost report shall be settled without an audit~~;~~]

(c) A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates ~~that~~which have been set based on unaudited data~~;~~and]

(d) Audits may be conducted annually or at less frequent intervals.

(14) A year-end adjustment of the prospective rate and a retroactive cost settlement shall be made if:

(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresentation on the part of a facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not

transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) A facility shall provide the services mandated in 42 C.F.R. 483.10(f)(11)(i)~~[(c)(8)(i)]~~.

(16) A facility shall submit to the department the data required for determining the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility with the department's concurrence.

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with a non-state, privately-owned facility's occupancy factor.

(a) An occupancy factor shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) A minimum occupancy factor shall be ninety (90) percent of certified bed days for a nonstate, privately-owned facility~~[facilities]~~ with less than ninety (90) percent certified bed occupancy.

(c) The department may impose a lower occupancy factor for a newly constructed or newly participating nonstate, privately-owned facility, or for an existing nonstate, privately-owned facility suffering a patient census decline as a result of a newly constructed or opened competing facility serving the same area.

(d) The department may impose a lower occupancy factor during the first two (2) full fiscal years an existing cost-based nonstate, privately-owned facility participates in the program under this payment system.

(18) A provider tax on a cost-based facility shall be considered an allowable cost.

(19) All other costs shall be:

- (a) Other care-related costs;
- (b) Other operating costs;
- (c) Capital costs; or
- (d) Indirect ancillary costs.

(20) Basic per diem costs for each major cost category (nursing services costs and all other costs) shall be the calculated rate arrived at after otherwise allowable costs are trended and adjusted in accordance with the:

- (a) ~~IHS Markit~~[Global Insight] Index inflation factor; and
- (b) Occupancy factor for a nonstate, privately owned facility.

(21) Maximum allowable costs shall be the maximum amount ~~that~~which may be allowed to a facility as reasonable cost for the provision of a supply or service while complying with limitations expressed in related federal or state administrative regulations.

(22) Nursing services costs shall be the direct costs associated with nursing services.

(23) State-owned or operated ICF-IID reimbursement for noncapital routine services shall be subject to an upper payment limit. The upper payment limit shall:

- (a) Be an aggregate limit on ICF-IID reimbursement paid by the department;
- (b) Equal 112 percent of the average of aggregate cost for a state fiscal year;
- (c) Be revised annually by the ~~IHS Markit~~[Global Insight] Index using the most recent full year of Medicaid paid days;
- (d) Not be rebased more frequently than every three (3) years; and
- (e) Use as its base year the State Fiscal Year 2005.

(24) The department shall retroactively cost settle state-owned or operated ICF-IID reimbursement for non-capital routine services beginning with the cost report period November 1, 2005 through June 30, 2006, as mandated by the Centers for Medicare and Medicaid Services in accordance with 42 U.S.C. 1396a(a)(30). Retroactive settlement shall entail:

(a) Comparing interim payments with the properly apportioned cost of Medicaid services rendered. Cost report data shall be used to determine properly apportioned costs;

(b) A tentative cost report settlement based upon:

1. Eighty (80) percent of any amount due the facility after a preliminary review is performed; or
2. 100 percent settlement of any liability due the department; and
- (c) A final cost report settlement after the allowed billing period has elapsed for the dates of service identified within the cost report.

(25) The department, regarding state-owned or operated ICF-IID reimbursement for noncapital routine services, shall:

(a) Use projected data in order to approximate as closely as possible an interim rate expected to correspond to post-settlement cost; and

(b) Adjust interim rates up or down if necessary to approximate a rate corresponding as close as possible to anticipated post-settlement cost.

Section 4. Prospective Rate Computation for a Cost-based Facility. The prospective rate for a cost-based facility shall reflect the following:

(1) The adjusted allowable cost for the facility; and

(2) Except for a state-owned or operated facility, the facility's occupancy factor. A state-owned or operated facility's occupancy factor shall not be factored into the facility's prospective rate.

Section 5. Ancillary Services. (1) Except for an intermediate care facility for individuals with an intellectual[mental-retardation-or-a-developmental] disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) Laboratory procedures or x-rays if ordered by a:

1. Physician;

2. An advanced practice registered nurse (APRN)[practitioner (ARNP)] if the laboratory test or x-ray is within the scope of the APRN's[ARNP's] practice; or

3. Physician assistant if:

a. Authorized by the supervising physician; and

b. The laboratory test or x-ray is within the scope of the physician assistant's practice.

(2) For an intermediate care facility for individuals with an intellectual[mental-retardation-or-a-developmental] disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services pursuant to [identified in] 907 KAR 1:023;

(b) Laboratory procedures or x-rays if ordered by a:

1. Physician;

2. An APRN[ARNP] if the laboratory test or x-ray is within the scope of the APRN's[ARNP's] practice; or

3. Physician assistant if:

a. Authorized by the supervising physician; and

b. The laboratory test or x-ray is within the scope of the physician assistant's practice; or

(c) Psychological or psychiatric therapy.

(3) Ancillary service.

(a) Reimbursement shall be subject to a year-end audit, retroactive adjustment, and final settlement.

(b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.

(4) For ancillary services, the department shall utilize an NF's prior year cost-to-charge ratio, based on the prior year's cost report as of May 31, as the percentage to be used for interim reimbursement purposes for the following year. (For example, if an NF's cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.)

(5) An NF without a prior year cost report may submit to the department a percentage to be used for interim reimbursement purposes for ancillary services.

(6) If an NF has been reimbursed for ancillary services at an interim percentage above its allowable cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage

points unless:

(a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or

(b) An evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.

Section 6. Reimbursement for a Nursing Facility With a Distinct Part Ventilator Unit. (1)(a) Except as provided by paragraph (b) of this subsection, a nursing facility with a distinct part ventilator unit[recognized as providing distinct part ventilator dependent care] shall be paid at an all-inclusive[excluding drugs which shall be reimbursed through the pharmacy program] fixed rate for services provided in the distinct part ventilator unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(2) A distinct part ventilator unit shall:

(a) Have a minimum of twenty (20) beds;

(b) Maintain a census of fifteen (15) patients; and

(c) Base the patient census upon:

1. The quarter preceding the beginning of the rate year; or

2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator[care] unit at the beginning of the rate year.

(3)(a) The fixed rate for a hospital-based facility shall be \$583.82 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section.

(b) The department shall reimburse a freestanding facility:

1. A fixed rate of \$317.29 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section; and

2. An add-on to the fixed rate in accordance with KRS 142.363.

(4) The fixed rates established in subsection (3) of this section shall be increased or decreased based on the IHS Markit Index[Data Resource Incorporated] rate of inflation indicator for the nursing facility services for each rate year.

(5) Costs of a distinct part ventilator unit in a nursing facility[units] shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Distinct Part Brain Injury Unit. (1) In order to participate in the Medicaid Program as a brain injury provider, a nursing facility with a distinct part brain injury unit shall:

(a) Be Medicare and Medicaid certified;

(b) Designate as a brain injury unit at least ten (10) certified beds that are physically contiguous and identifiable;

(c) After the first year of participation, be accredited by:

1. The Commission on Accreditation of Rehabilitation Facilities (CARF); or

2. The Joint Commission[after the first year of participation]; and

(d) Establish written policies regarding administration and operations, the facility's governing authority, quality assurance, and program evaluation.

(2)(a) Except as provided in subsection (3) of this section and paragraph (b) of this subsection, a nursing facility with a distinct part[Medicaid-certified] brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive[excluding drugs which shall be reimbursed through the pharmacy program] fixed rate, which shall be set at \$530[\$475] per diem for services provided in the brain injury unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(3)(a) Except as provided by paragraph (b) of this subsection,

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a facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive~~[(excluding drugs which shall be reimbursed through the pharmacy program)]~~ negotiated rate, which shall not exceed the facility's usual and customary charges.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(c) The negotiated rate established pursuant to paragraph (a) of this subsection shall be:

1. A minimum of the approved rate for a Medicaid certified brain injury unit;

2. A maximum of the lesser of the average rate paid by all payers for this service; or

3. The facility's usual and customary charges.

Section 8. Appeal Rights. A participating facility may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR) for a Nursing Facility With a Distinct Part Ventilator Unit, a Nursing Facility With a Distinct Part Brain Injury Unit, an IMD, or a Dually-licensed Pediatric Facility. (1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a facility for a covered service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of a facility's participation in the Medicaid Program.

Section 10. Reimbursement Provisions. (1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

(a) A nursing facility with a distinct part~~[certified]~~ brain injury unit;

(b) A nursing facility with a distinct part ventilator unit;

(c) A nursing facility designated as an institution for mental diseases;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for individuals with an intellectual~~[mental retardation or a developmental]~~ disability.

(2) A payment made to a facility governed by this administrative regulation shall:

(a) Be made in accordance with the requirements established in 907 KAR 1:022; and

(b) Be subject to the limits established in 42 C.F.R. 447.272.

Section 11. Supplemental Payments to Dually-licensed Pediatric Facilities. (1) Beginning July 1, 2002 and annually thereafter, the department shall establish a pool of \$550,000 to be distributed to facilities qualifying for supplemental payments in accordance with subsection (2) of this section.

(2) Based upon its pro rata share of Medicaid patient days compared to total patient days of all qualifying facilities, a dually-licensed pediatric facility shall qualify for a supplemental payment if:

(a) Funding is available; and

(b) The facility:

1. Is located within the Commonwealth of Kentucky;

2. Has a Medicaid occupancy rate at or above eighty-five (85) percent;

3. Only provides services to children under age twenty-one (21); and

4. Has forty (40) or more licensed beds.

(3) A supplemental payment to a facility meeting the criteria established in subsection (2) of this section shall:

(a) Apply to services provided on or after July 1, 2002;

(b) Be made on a quarterly basis; and

(c) Not be subject to the cost settlement provisions established in Section 3 of this administrative regulation.

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

(a) "Cost-based Facility Reimbursement Cost Report Instructions", April 2000 Edition; and

(b) "Cost-based Facility Reimbursement Cost Report", April 2000 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JILL R. HUNTER, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: August 30, 2018

FILED WITH LRC: September 13, 2018 at 4 p.m.

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### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (As Amended at ARRS, November 13, 2018)**

#### **921 KAR 3:025. Technical requirements.**

RELATES TO: KRS 205.2005, 7 C.F.R. 273.4, 273.5, 273.7, 273.11, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 272, 273

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. 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. 272 and 273 establish[set forth] requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he entered the United States. This administrative regulation establishes[sets forth] the technical eligibility requirements used by the cabinet in the administration of SNAP.

Section 1. Definitions. (1) "Certification period" means a period of time during which a household shall be eligible to receive SNAP benefits.

(2) "Exempt" means excused by the department from participation in the Supplemental Nutrition Assistance Program Employment and Training Program (E&T).

(3) "Qualified alien" is defined by 7 C.F.R. 273.4.

(4) "Student" means a person who is between the ages of eighteen (18) and forty-nine (49), physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for SNAP.

Section 3. Technical Eligibility Criteria. Technical eligibility

requirements shall apply to all households and consist of:

- (1) Residency. A household:
  - (a) Shall reside in the county in which the household receives benefits; and
  - (b) May apply for benefits in any county in accordance with [as specified in] 921 KAR 3:030, Section 3.
- (2) Identity.
  - (a) The applicant's identity shall be verified; and
  - (b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified.
- (3) Citizenship and alien status.
  - (a) An individual shall satisfy the citizenship and alien status requirement if the individual is a:
    1. Citizen of the United States;
    2. U.S. noncitizen national; or
    3. Qualified alien who is lawfully residing in Kentucky.
  - (b) Except as provided in paragraph (c) of this subsection, an individual whose status is questionable shall be ineligible to participate until verified.
  - (c) An individual whose status is pending verification from a federal agency shall be eligible to participate for up to six (6) months from the date of the original request for verification.
  - (d) A single household member shall attest in writing to the citizenship or alien status requirements as established in 921 KAR 3:030 for each household member.
- (4) Household size. If information is obtained by the Department for Community Based Services (DCBS) that household size differs from the household's stated size, the size of household shall be verified through readily available documentary evidence or through a collateral contact.
- (5) Students. A student shall be ineligible to participate unless the student is:
  - (a) ~~1.~~ Engaged in paid employment for an average of twenty (20) hours per week; or
  - ~~2.~~ If self-employed, [shall be] employed for an average of twenty (20) hours per week and receiving [receive] weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours;
  - (b) Participating in a state or federally financed work study program during the regular school year;
  - (c) Responsible for the care of a dependent household member under the age of six (6);
  - (d) Responsible for the care of a dependent household member who has reached the age of six (6), but is under age twelve (12) and for whom the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection;
  - (e) Receiving benefits from the Kentucky Transitional Assistance Program (K-TAP);
  - (f) Assigned to or placed in an institution of higher learning through a program pursuant to:
    1. 29 U.S.C. 2801;
    2. 45 U.S.C. 261.2; or
    3. 19 U.S.C. 2296;
  - (g) Enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 U.S.C. 681;
  - (h) Enrolled in an institution of higher learning as a result of participation in E&T in accordance with 921 KAR 3:042; or
  - (i) A single parent with responsibility for the care of a dependent household member under age twelve (12).
- (6) Social Security number (SSN).
  - (a) Households applying for or participating in SNAP shall comply with SSN requirements by providing the SSN of each household member or applying for a number [one] prior to certification.
  - (b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in SNAP until this requirement is met.
- (7) Work registration. All household members, unless exempt, shall be required to comply with the work registration

- requirements ~~[, unless exempt, as]~~ established in Section 4 of this administrative regulation.
- (8) Work requirement.
    - (a) Except for individuals who may be eligible for up to three (3) additional months in accordance with Section 4 of this administrative regulation, an individual shall not be eligible to participate in SNAP as a member of a household if the individual received SNAP for more than three (3) countable months during any three (3) year period, during which the individual did not:
      1. Work eighty (80) hours or more per month;
      2. Participate in and comply with the requirements of the E&T component pursuant to 7 U.S.C. 2015(d) for twenty (20) hours or more per week;
      3. Participate in and comply with the requirements of a program pursuant to:
        - a. 29 U.S.C. 2801 to 2945; or
        - b. 19 U.S.C. 2296;
      4. Participate in and comply with the requirements established in 921 KAR 3:042 ~~[the:~~
        - a. ~~Work Experience Program component of SNAP Employment and Training Program; or~~
        - b. ~~Vocational Education Skill Training Program]; or~~
      5. Receive SNAP benefits pursuant to paragraph (b), (c), or (d) of this subsection.
    - (b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:
      1. Under eighteen (18) or fifty (50) years of age or older;
      2. Physically or mentally unfit for employment as determined by the cabinet;
      3. A parent or other adult member of a household containing a dependent child under the age of eighteen (18);
      4. Exempt from work registration pursuant to [as specified in] Section 4(4) of this administrative regulation; or
      5. Pregnant.
    - (c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by FNS, the county or area in which the individual resides:
      1. Has an unemployment rate of over ten (10) percent; or
      2. Does not have a sufficient number of jobs to provide employment.
    - (d) Subsequent eligibility.
      1. An individual denied eligibility pursuant to [under] paragraph (a) of this subsection shall regain eligibility to participate in SNAP if, during a thirty (30) day period, the individual meets the conditions of paragraph (a) 1<sub>1</sub> through 4<sub>2</sub> of this subsection, or the individual was not meeting the work requirements in accordance with paragraph (b) of this subsection.
      2. An individual who regains eligibility pursuant to subparagraph 1<sub>1</sub> of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1<sub>1</sub> of this paragraph.
    - (e) Loss of employment or training.
      1. An individual who regains eligibility pursuant to [under] paragraph (d) 1<sub>1</sub> of this subsection and who no longer meets the requirements of paragraph (a) 1<sub>1</sub> through 4<sub>2</sub> of this subsection shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a) 1<sub>1</sub> through 4<sub>2</sub> of this subsection.
      2. An individual shall not receive benefits pursuant to [under] subparagraph 1<sub>1</sub> of this paragraph for more than a single three (3) month period in any three (3) year period.
    - (f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for SNAP benefits.
  - (9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.
  - (10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and that has an element of possession, use, or distribution of a controlled substance as defined in 21 U.S.C. 862(a), may remain eligible for SNAP benefits if the individual

meets the requirements pursuant to KRS 205.2005.

(11) Child Support Arrears.

(a) In accordance with 7 C.F.R. 273.11(g) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:

1. Is enrolled in a drug treatment program;

2. Is participating in a state or federally funded employment training program; ~~or~~

3. Meets good cause for nonpayment. Good cause shall include temporary situations of thirty (30) days or less resulting from illness, job change, or pendency of unemployment benefits;

4. Is a member of a SNAP household containing a child under the age of six (6);

5. Is pregnant or three (3) months post-partum; or

6. Is:

a. Within three (3) months of incarceration for a period of at least six (6) months; and

b. Cooperating with the Department for Income Support, Child Support Enforcement.

(b) The disqualification of an individual in accordance with paragraph (a) of this subsection shall be in place as long as the individual remains delinquent as determined by Department for Income Support, Child Support Enforcement.

(c) The income, expenses, and resources of an individual disqualified in accordance with paragraph (a) of this subsection shall be processed in accordance with 921 KAR 3:035, Section 5(4).

Section 4. Work Registration. (1) Unless a household member is exempt from work requirements as established[specified] in subsection (4) of this section, a household member shall register for work:

(a) At the time of initial application for SNAP; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person shall be an:

(a) Ineligible alien; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment pursuant to[as specified in] 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program if assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035 shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The cabinet's E&T worker shall explain to the SNAP applicant the:

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

Section 5. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with work registration requirements as established[specified] in Section 4 of this administrative regulation; or

(b) Household member has, pursuant to[as described in] Section 7 of this administrative regulation, voluntarily:

1. Quit a job; or

2. Reduced the household member's work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; or

(e) Lack of adequate care for a child who is six (6) to twelve (12) years of age for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance established[specified] in subsection (2) of this section exists;

(b) The employment became unsuitable in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance established[specified] in 7 C.F.R. 273.7(i)(3) exists.

Section 6. Disqualification. (1) A participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration requirements; or

(b) Is determined to have voluntarily, without good cause, quit a job or reduced the work effort as established in Section 5 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b) 1. Serves the disqualification period established[specified] in subsection (2)(b) of this section; and

2. Complies with the work registration requirements.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period established[specified] in subsection (2)(b) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size in the determination of the SNAP allotment.

Section 7. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily, without good cause:

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces the individual's work effort to:

1. Less than thirty (30) hours per week; and

2. After the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) The cabinet shall impose a disqualification period established in Section 6(2)(b) of this administrative regulation on an individual meeting subsection (1)(a) or (1)(b) of this section.

Section 8. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be



reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit;

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 6(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.

(3) If an individual becomes exempt from work registration, the disqualification period shall end, and the individual shall be eligible to apply to participate in SNAP.

Section 9. Hearing Process. If aggrieved by a cabinet action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

ADRIA JOHNSON, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 6, 2018

FILED WITH LRC: June 7, 2018 at 4 p.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Family Support  
(As Amended at ARRS, November 13, 2018)**

**921 KAR 3:035. Certification process.**

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015(d), 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 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. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as established[specified] in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for:

(a) Four (4)[Twelve (12)] months if the household contains an able-bodied adult without dependent (ABAWD) in accordance with 7 U.S.C. 2015(d);[or]

(b) Six (6) months if the household includes a member who is not ABAWD or elderly or disabled with no earned income; or

(c) Twelve (12)[Twenty-four (24)] months if all household members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a four (4), six (6), or twelve (12)[or twenty-four (24)] month certification as established[specified] in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household certified for twelve (12) months in accordance with subsection (2)(c) of this section, which reports a change during the household's initial five (5) months of the certification period of earned income or a new member who is not elderly or disabled.[-] [-] shall complete an interim report using the FS-2, SNAP REVIEW, [every six (6) months] during the sixth month of the household's certification period[- unless all household members meet criteria specified in subparagraph 2 of this paragraph; or

2. In which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using the FS-2 during the 12th month of the household's certification period].

(b) If a household fails to return a completed FS-2 or the required verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

- (1) Notice of eligibility;
- (2) Notice of denial; or
- (3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as established[specified] in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or
2. Is received on a monthly basis that[which] represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a

monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and
2. Include all direct payments to the household for:
  - a. Room;
  - b. Meals; and
  - c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;
2. Comparing monthly income with income eligibility standards; and
3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11), or ineligible alien status, shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as established[described] in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as established[specified] in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or
2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as established[described] in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

- 1.a. A narcotic addict; or
- b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse, which shall:

- a. Include total monthly earned and unearned income; and
- b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as

~~established~~~~[specified]~~ in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as ~~established~~~~[specified]~~ in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;
2. Is credited with forty (40) qualifying quarters of work;
3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);
4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or
5. Dies, or the sponsor dies.

(d) In accordance with 7 U.S.C. 2014(i)(2)(E), deeming requirements shall not apply to sponsored alien children under eighteen (18) years of age.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change ~~that~~~~[which]~~ causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as ~~established~~~~[specified]~~ in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP REVIEW", 9/16, is incorporated by reference.

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

ADRIA JOHNSON, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 4, 2018

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#### **CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Community Based Services**

**Division of Protection and Permanency**

**(As Amended at ARRS, November 13, 2018)**

#### **922 KAR 1:560. Putative father registry and operating procedures.**

RELATES TO: KRS 194A.060, 199.011, 199.480, 199.505, 199.990, 620.020(11), 625.065

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.503(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and

Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.472(1) requires the cabinet to promulgate administrative regulations that establish criteria to be followed for the adoption of children. Ky. Acts ch. 159, Section 28(3), codified as KRS 199.503(3), requires that the cabinet establish a putative father registry and promulgate administrative regulations to administer the registry. This administrative regulation establishes the putative father registry and operating procedures.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3).

(2) "Child-placing agency" is defined by KRS 199.011(6).

(3) "Department" is defined by KRS 199.011(7).

(4) "Putative father" is defined by KRS 199.503(2).

(5) "Reasonable efforts" is defined by KRS 620.020(11).

Section 2. Registry Standards. (1) The cabinet shall establish and maintain a putative father registry in accordance with KRS 199.503, ~~[KRS]~~ 199.505, and ~~[KRS]~~ 199.990.

(2) Information received and recorded by the cabinet shall be kept confidential in accordance with KRS 194A.060 and ~~[KRS]~~ 199.503(11).

Section 3. Submission of Registration. (1) A putative father shall request registration on the putative father registry by completing the DPP-1304, Putative Father Registration Form.

(2) A putative father shall submit a DPP-1304 to the cabinet by:

(a) Mail to the Department for Community Based Services, attention: Putative Father Registry, 275 East Main Street, mail-stop 3C-E, Frankfort, Kentucky 40621;

(b) Electronic submission through the online registration system located on the department's website once the online function is available; or

(c) Electronic mail to [putativefather@ky.gov](mailto:putativefather@ky.gov).

(3) A putative father shall provide the following information on the DPP-1304 prior to the cabinet accepting and processing a registration request:

(a) The putative father's full name;

(b) The putative father's date of birth;

(c) The putative father's place of birth;

(d) The putative father's place of residence;

(e) An address where the putative father may be served with notice of a petition for termination of parental rights or adoption;

(f) The first and last name of the birth mother;

(g) The birth mother's date of birth, if known;

(h) The birth mother's place of birth, if known;

(i) The birth mother's place of residence, if known;

(j) The birth mother's mailing address, if known;

(k) The child's name, if known;

(l) The child's date of birth, if known; and

(m) The child's place of birth, if known.

~~(4)~~~~(3)~~ A putative father shall sign the DPP-1304 verifying that the information in his registration is accurate subject to penalty in accordance with KRS 199.990.

~~(5)~~~~(4)~~ A putative father who is registered shall submit an amended DPP-1304 each time information about the father changes in accordance with KRS 199.503(4)(b)2.

~~(6)~~~~(5)~~ The cabinet shall not accept and shall attempt to return a DPP-1304 that:

(a) Does not contain the information required by subsection (2) of this section; or

(b) Is not accepted in accordance with subsection (7) of this section.

~~(7)~~~~(6)~~ The cabinet shall:

(a) Accept a DPP-1304 that contains information required by subsection (2) of this section and is submitted within the timeframe specified in subsection (7) of this section; and

(b) Provide the putative father with a copy of his registration, including:

1. A registration number; and

2. The date the registration was processed and made effective by the cabinet.

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**(8)(7)** The cabinet shall not accept a registration request that is electronically submitted, electronically mailed, or postmarked more than thirty (30) days after the birth of the child subject to the registration in accordance with KRS 199.480(1)(b)2. and **[KRS] 625.065(1)(b)**.

Section 4. Search of the Putative Father Registry. (1) An individual or entity authorized by KRS 199.503(8) or **[KRS] 199.505**, to receive a certified copy of a putative father's registration shall:

(a) Complete the DPP-1305, Putative Father Registry Search Request;

(b) Include a copy of the birth mother's consent or adoption petition with the **DPP-1305[form]**; and

(c) Submit the DPP-1305 to the cabinet **in accordance with[by means specified in]** Section 3(2)(a) through (c) of this administration regulation.

(2) Unless the entity requesting a certified copy of a putative father's registration is a court, a DPP-1305 shall include a twenty-five (25) dollar fee in accordance with KRS 199.503(10), paid by:

(a) Certified or cashier's check or money order made payable to the Kentucky State Treasurer if the DPP-1305 is mailed to the cabinet;

(b) A prepaid account established with the cabinet; or

(c) Credit or debit card through the online registration system once the function becomes available.

(3) Upon submission of a completed DPP-1305 in accordance with this section, KRS 199.503 and **[KRS] 199.505**, the cabinet shall issue a DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search.

(4) The cabinet may request at any time a search of the putative father registry to establish:

(a) Reasonable efforts in a child protective services case in accordance with 922 KAR 1:330; or

(b) Permanency services in accordance with 922 KAR 1:140.

(5) Pursuant to KRS 199.505, a search of the putative father registry shall not be required for a public agency adoption in accordance with 922 KAR 1:100.

Section 5. Registration Revocation. (1) A putative father registrant may revoke his registration at any time using the DPP-1304.

(2) The cabinet shall revoke a registration that is found to have been filed with error or false information.

(3) The cabinet shall provide notice of:

(a) Revocation of a registration; and

(b) Appeal rights in accordance with 922 KAR 1:320 if the revocation is performed by the cabinet in accordance with subsection (2) of this section.

Section 6. Notice by a Mother. (1) A mother may notify the cabinet of a potential putative father by completing, at a minimum, Part 1 of the DPP-1303, Birth Mother Notification of Putative Father, and submitting it to the cabinet **in accordance with[through means specified in]** Section 3(2)(a) through (c) of this administrative regulation.

(2) Upon receipt of a completed DPP-1303, the cabinet shall provide the putative father with information regarding the putative father registry by:

(a) Mail to his mailing address; or

(b) Delivery to his place of residence.

(3) The cabinet shall take no action on a DPP-1303 that is received after a putative father's ability to register has expired in accordance with Section 3(7) of this administrative regulation.

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

(a) "DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search", **9/18[7/18]**;

(b) "DPP-1303, Birth Mother Notification of Putative Father", **9/18[7/18]**;

(c) "DPP-1304, Putative Father Registration Form", **9/18[7/18]**; and

(d) "DPP-1305, Putative Father Registry Search Request", 7/18;

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at noon

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(Amended After Comments)

**201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).**

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121  
STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to ensure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definitions.

(1) "Automated Dispensing System" ("ADS") means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

(2) "Emergency Drug" means those drugs that are required to meet the immediate therapeutic needs of patients that are not available from any other authorized source in sufficient time to prevent risk of harm to patients because of delay.

(3) "Emergency Medication Kit" ("EMK") means an onsite manual or automated mechanism for delivering emergency medications.

(4) "Individual dose" means smallest unit that is commercially available.

(5) "Long-term care facility" ("LTCF") means:

(a) An intermediate care facility;

(b) A skilled nursing facility;

(c) An intermediate care facility for intellectually and developmentally disabled; [or]

(d) A nursing home, or [;]

(e) A personal care home ("PCH") with personnel licensed to lawfully administer medications.

(6) "Long Term Care Facility Drug Stock" ("LTCF drug stock") means a dose or doses generated from a prescription order sufficient until the next pharmacy business day or IV Fluids that are used for replenishment, which contain no additive drugs, or irrigation solutions.

Section 2. General Requirements.

(1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policies and procedures governing the procurement, distribution, storage, security, and control of all drugs that are provided to a LTCF, and shall review all policies and procedures at least once every twelve (12) months.

(2) The pharmacist in charge of a dispensing pharmacy shall:

(a) Provide LTCF drug stock or an EMK only to facilities that authorize entry by a board agent for the purposes of inspection or investigation of the LTCF drug stock or EMK at the facility;

(b) Written authorization for entry shall be maintained by the PIC of the dispensing pharmacy; and

(c) Written authorization for entry shall be immediately provided to the board by the PIC upon request of a board agent.

(d) Maintain a current list of all locations where LTCF drug stock or an EMK are stored, which shall be made immediately available upon request by a board agent.

(3) Dispensing.

(a) Controlled substance medications shall be dispensed only by prescription drug order.

(b) Non-controlled substance medications shall be dispensed only on a medical order or prescription drug order of a licensed practitioner.

(c) A medical order entered on the medical record of a patient at a LTCF shall contain:

1. Name of patient;

2. Date of issuance;

3. Name, strength, and dosage form of drug prescribed;

4. Directions for use; and

5. Practitioner's name.

(d) Each licensee shall comply with United States Pharmacopeia (USP) Chapter 7 regarding labeling and packaging.

(4) The services of a pharmacist shall be readily available at all times.

(5) Emergency Drugs.

(a) Emergency drugs for controlled substances in a LTCF EMK shall be stocked pursuant to 902 KAR 55:070.

(b) Emergency drugs for non-controlled substances in an EMK shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, per LTCF.

(c) The pharmacist-in-charge may request a waiver from the board to increase the number of doses or numbers of non-controlled substances in the EMK based on evidence of use.

(d) An EMK shall be assessed for outdated, damaged or adulterated drugs, and stock adequacy by:

1. A pharmacist or any lawful person as stated in 902 KAR 55:070 on a monthly basis for controlled substances.

2. A pharmacist, a PIC authorized pharmacist intern, or certified pharmacy technician on a monthly basis for non-controlled substances.

(e) EMK drugs shall be supplied in unit dose packaging unless precluded by manufacturer packaging.

(f) An EMK shall be conspicuously labeled.

(g) An EMK drug shall be accessed only upon a lawful prescription order.

(h) All prescription orders shall be reviewed by a pharmacist within one (1) pharmacy business day.

(6) Initial Dose of LTCF drug stock in a LTCF.

(a) LTCF drug stock of drugs shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.

(b) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in LTCF drug stock based upon evidence of use.

(c) The pharmacist-in-charge shall be responsible for authenticating the need for LTCF drug stock.

(d) A pharmacist shall review the prescription drug or medical order before the release of medication.

(e) LTCF drug stock shall be inspected by pharmacy personnel at least monthly and documentation shall be maintained to determine if:

1. Medications are outdated; and

2. Stocks are maintained at adequate levels.

(f) Except for LTCF drug stock of intravenous fluids with no additive drugs or irrigation solutions, the LTCF drug stock shall be replenished by:

1. A tamper-resistant secure container delivered from the pharmacy; or

2. A tamper-resistant secure container for the stocking of an ADS; or

3. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the immediate supervision of a pharmacist on-site, if there is no pharmacy on-site; or

4. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the supervision of a pharmacist, if there is a pharmacy on-site.

Section 3. (1) The pharmacist-in-charge of an ADS in a LTCF shall be responsible for the following:

(a) Initial validation of the ADS accuracy prior to use for distribution to patients assuring that the ADS:

1. Is in good order and accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and

2. Complies with the recordkeeping and security safeguards

pursuant to Section 4 of this administrative regulation.

(b) Assuring that non-controlled substance prescription drug orders and medical orders are reviewed and approved by a pharmacist prior to access, except for emergency drugs; and

(c) Assuring that controlled substance prescription drug orders are reviewed and approved by a pharmacist prior to accessing the controlled substance emergency drugs.

(d) Implementing an ongoing quality assurance program that monitors performance of the ADS, pursuant to the written policies and procedures.

(e) Assigning, discontinuing or changing personnel access to the system.

(f) Assuring appropriate access to medications.

#### Section 4. Standards.

(1) A permit holder utilizing an ADS shall comply with the following provisions:

(a) A pharmacy shall maintain the following documentation:

1. Name and address of the LTCF where the system is being used;

2. The ADS manufacturer's name, model, and serial number;

3. An operations manual;

4. Description of how the system is used;

5. Written quality assurance procedures to determine continued appropriate use of the system; and

6. Written policies and procedures for system operation, safety, security, accuracy, access and malfunction.

(2) All written policies and procedures shall be maintained in the pharmacy responsible for the ADS.

(3) An ADS shall maintain adequate security systems and procedures, pursuant to written policies and procedures, that prevent unauthorized access to patient records and maintain patient confidentiality.

(4) ADS records and data shall meet the following requirements:

(a) All events involving the contents of the ADS shall be recorded electronically; and

(b) Records shall be maintained by the pharmacy for five (5) years, be available to the board, and shall include the following:

1. The time and location of each system access;

2. Identification of the individual accessing the system;

3. Name of the patient for whom the drug was ordered;

4. Name, strength, dosage form and quantity of drug accessed;

5. Type of transaction;

6. The prescription or transaction number if assigned; and

7. The name of the prescriber.

(c) All events involving user database modifications shall be recorded electronically and maintained.

(d) A twenty-four (24) hour emergency call center shall be available for any ADS malfunction.

(5) The stocking of all medications in an ADS shall be performed by a:

(a) Pharmacist;

(b) Pharmacist intern; or

(c) Certified pharmacy technician who shall be under the general supervision of a pharmacist on-site.

(6) If the pharmacy utilizes a tamper resistant barcoding technology, microchip, or other equivalent tamper-resistant ADS, a pharmacist-verified drug can then be loaded by a pharmacist-in-charge trained pharmacist, pharmacist intern, or certified pharmacy technician.

(7) A record of medications stocked in an ADS shall be maintained for five (5) years and shall include identification of the person stocking the ADS and the pharmacist checking for accuracy.

(8) The pharmacist-in-charge shall provide a policy for accounting for medications removed from an ADS and subsequently wasted.

(9) The pharmacist-in-charge shall provide a policy for accounting for medications returned to an ADS. [Section 4. Definitions. (1) "Immediate supervision" is defined by KRS 315.010(11).

(2) "Long-term care facility" or "LTCF" means:

(a) An intermediate care facility;

(b) A skilled nursing facility;

(c) A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;

(d) An intermediate care facility for intellectually and developmentally disabled; or

(e) A personal care facility.

(3) "Pharmacist-in-charge" means a pharmacist mandated as in charge under KRS 315.020 and who meets the requirements of 201 KAR 2:205.

(4) "Supervision" is defined by KRS 315.010(25).

Section 2. General Requirements. (1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policy and procedures governing the procurement, distribution, and control of all drugs that are provided to a long-term care facility.

(2) Dispensing.

(a) Medications shall be dispensed only on the medical order (for a non-controlled substance) or a prescription drug order of a licensed practitioner.

(b) A medical order (for a non-controlled substance) shall be considered a prescription drug order if it is entered on the medical record of a patient at an LTCF and if the medical order contains the:

1. Name of patient;

2. Date of issuance;

3. Name, strength, and dosage form of drug prescribed;

4. Directions for use;

5. Quantity of length of therapy as defined in policy and procedures or as defined by medical order; and

6. Practitioner's name.

(3) Emergency Drugs.

(a) The pharmacist-in-charge of the dispensing pharmacy shall establish policy and procedures for supplying emergency drugs.

(b) For expediency and efficiency, emergency drugs shall be limited in number to include controlled substances stocked pursuant to 902 KAR 55:070 that shall not exceed six (6) individual doses of six (6) different controlled substances and shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, and whose prompt use and immediate availability are generally regarded as essential in the proper treatment of sudden and unforeseen patient emergencies.

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be included in the emergency kit based upon evidence of use.

(d) Emergency drug stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(e) Emergency drug stock shall not be stocked in a personal care facility.

(4) Long Term Care Facility Pharmacy Stock.

(a) Pharmacy stock of drugs in an LTCF shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.

(b) Pharmacy stock of drugs in a personal care facility shall not exceed five (5) individual doses each of thirty (30) non-controlled substances.

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in pharmacy stock based upon evidence of use.

(d) The pharmacist-in-charge shall be responsible for authenticating the need for pharmacy stock.

(e) A pharmacist shall review the prescription drug or medical order before the release of medication.

(f) Pharmacy stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if stocks are being maintained at adequate levels.

(g) Pharmacy stock shall be used for a patient for no more than the next business day.

(h) Except for pharmacy stock of intravenous fluids with no additive drugs or irrigation solutions, the pharmacy stock shall be



replenished by:

1. A secure box delivered by the pharmacy; or
2. A pharmacist or a pharmacist intern, or a certified pharmacy technician, who shall be under the immediate supervision of a pharmacist on-site, unless there is a pharmacy on-site, then the pharmacy stock shall be replenished by a pharmacist or a pharmacist intern or a certified pharmacy technician under the supervision of a pharmacist on-site.]

CATHY HANNA, R.Ph., President

APPROVED BY AGENCY: November 818, 2018

FILED WITH LRC: November 14, 2018 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email [Larry.Hadley@ky.gov](mailto:Larry.Hadley@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

(b) The necessity of this administrative regulation: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. Long-term care facilities utilize the services of pharmacists and pharmacies. This regulation establishes requirements for pharmacy services in long-term care facilities, and the conduct of pharmacists who engage in the practice of pharmacy on behalf of long-term care facilities

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes guidelines and criteria for the pharmacies and pharmacists who provide care to long-term care facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Pharmacies and pharmacists will understand what is expected when providing services to long-term care facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments recognize personal care homes as long-term care facilities, and define an individual dose.

(b) The necessity of the amendment to this administrative regulation: EMKs needed to be available to patients of long-term care facilities, and individual dose needed to be defined.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. The amendments flesh out definitions that affect pharmacy practice within long-term care facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies who provide services to long-term care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than 100 long term care facilities utilize the services of pharmacies and pharmacists.

(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: Pharmacies and pharmacists will have

to familiarize themselves with new guidelines, especially since more services will be provided via automation. The board will help to educate pharmacists and pharmacies in these changes.

(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 expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacy services will be provided in a safe, and effective manner to patients of long-term care facilities.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all long-term care facilities equally.

#### 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 Kentucky Board of Pharmacy 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 315.002 and 315.005 require standards of practice in all settings where drugs are handled.

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? This administrative regulation will not generate revenue for the board in the first year.

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

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

**401 KAR 52:050. Permit application, registration application, and compliance forms.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 51, Part 70, 42 U.S.C. 7401-7671q  
STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, [40 C.F.R. Part 51, Part 70,] 42 U.S.C. 7401-7671q

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes[requires] the [Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes and incorporates by reference the application and compliance forms used to permit or register air contaminant sources in Kentucky.

Section 1. Applicability.

(1) An applicant shall use forms DEP7007 AI through HH, ["Forms DEP7007AI to DD, Permit Application to Construct or Operate an Air Contaminant Source", shall be required] to apply for a permit, permit revision, [or] permit renewal, or registration pursuant to 401 KAR 52:020, Section 4(1); [401] 52:030, Section 4(1); [or 401 KAR] 52:040, Section 4(1); or 52:070, Section 7(1), as applicable.

(2) An applicant may use previous versions of the forms incorporated by reference in this administrative regulation until July 1, 2019. ["Forms DEP7007AI to DD, Permit Application to Construct or Operate an Air Contaminant Source", is incorporated by reference in Section 2 of this administrative regulation.]

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) Administrative Information, DEP7007AI, **November [August] 2018;**
- (b) Indirect Heat Exchangers and Turbines, DEP7007A, **November [August] 2018;**
- (c) Manufacturing or Processing Operations, DEP7007B, **November [August] 2018;**
- (d) Incinerators and Waste Burners, DEP7007C, **November [August] 2018;**
- (e) Episode Standby Plan, DEP7007F, **November [August] 2018;**
- (f) Volatile Liquid Storage, DEP7007J, **November [August] 2018;**
- (g) Surface Coating or Printing Operations, DEP7007K, **November [August] 2018;**
- (h) Mineral Processes, DEP7007L, **November [August] 2018;**
- (i) Metal Cleaning Degreasers, DEP7007M, **November [August] 2018;**
- (j) Source Emissions Profile, DEP7007N, **November [August] 2018;**
- (k) Perchloroethylene Dry Cleaning Systems, DEP7007P, **November [August] 2018;**
- (l) Emission Offset Credit, DEP7007R, **November [August] 2018;**
- (m) Service Stations, DEP7007S, **November [August] 2018;**
- (n) Metal Plating and Surface Treatment Operations, DEP7007T, **November [August] 2018;**
- (o) Applicable Requirements and Compliance Activities, DEP7007V, **November [August] 2018;**
- (p) Good Engineering Practice and Stack Height Determination, DEP7007Y, **November [August] 2018;**
- (q) Compliance Schedule for Noncomplying Emission Units, DEP7007AA, **November [August] 2018;**
- (r) Certified Progress Report, DEP7007BB, **November [August] 2018;**
- (s) Compliance Certification, DEP7007CC, **November**

**[August] 2018;**

(t) Insignificant Activities, DEP7007DD, **November [August] 2018;**

(u) Internal Combustion Engines, DEP7007EE, **November**

**[August] 2018;**

(v) Secondary Aluminum Processing, DEP7007FF, **November**

**[August] 2018;**

(w) Control Equipment, DEP7007GG, **November [August] 2018; and**

(x) Haul Roads, DEP7007HH, **November [August]**

2018. ["Forms DEP7007AI to DD, Permit Application to Construct or Operate an Air Contaminant Source", June 2000, is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 1332 South Kentucky Highway, Suite 100 [233 Birch Street, Suite 2], Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material is available:

(a) On request by contacting the Division for Air Quality, Permit Support Section, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999; or

(b) On the Internet at: <http://air.ky.gov>.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 15, 2018 at noon

CONTACT PERSON: Cassandra Jobe, Supervisor, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, email [cassandra.jobe@ky.gov](mailto:cassandra.jobe@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference application and compliance forms used to permit or register air contaminant sources in Kentucky. Air contaminant sources shall be required to apply for a permit, permit revision, permit renewal, or registration pursuant to 401 KAR 52:050, Section 4(1); 52:030, Section 4(1); 52:040, Section 4(1); or 52:070, Section 7(1), as applicable.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that applications for permits and registrations contain information necessary to determine the applicability of federal and state regulations to new and existing air contaminant sources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes forms utilized for permitting and registering air contaminant sources in Kentucky. By permitting and registering air contaminant sources, the Cabinet

can continue to enforce air quality regulations and air quality in Kentucky will continue to improve.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by requiring information about a source to determine applicability of federal and state air regulations.

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

(a) How the amendment will change this existing administrative regulation: This proposed amendment makes changes to the forms for clarification purposes and adds language to the administrative regulation to allow for a 6 month period where previous versions of the forms can be submitted.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment is necessary clarify information contained on the forms and to all the regulated community a 6 month period to use the old forms in order to reduce paperwork burden for applications that are already in the process of being completed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This amendment conforms to the content of the authorizing statutes by clarifying information in the permit and registration application forms for emissions from air contaminant sources.

(d) How the amendment will assist in the effective administration of statutes: The proposed amendment will assist in the effective administration of the statutes by requiring information about a source to determine applicability of federal and state regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The proposed administrative regulation incorporates by reference the application forms, which air contaminant sources are required to use when applying for a permit, permit revision, permit renewal, or registration in the Commonwealth of Kentucky. All sources in Kentucky subject to 401 KAR 52:020, 52:030, 52:040, and 52:070 are required to use the forms in this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Air contaminant sources will use the forms incorporated by reference in this administrative regulation when applying for a permit, permit revision, permit renewal, or registration for an air contaminant source in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with this administrative regulation because it updates and streamlines the permitting and registration forms that are incorporated by reference.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The streamlined forms will be easier to use, will provide clarity, uniformity, and ensure that regulated air pollutants are regulated properly. The forms can be filled out and filed electronically. In addition, this amendment allows for older forms to be used for a period of 6 months for any applications that have regulated entities have already started internally.

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

(a) Initially: There will be no additional costs to implement the proposed administrative regulation initially.

(b) On a continuing basis: There will be no additional costs to implement the proposed administrative 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 Division for Air Quality's current operating budget will be used to implement the proposed administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The proposed administrative regulation incorporates by reference the forms that are used by the cabinet for permitting and registering air contaminant sources. However, tiering is provided within the cabinet's permitting program in that sources whose emissions fall below certain levels are required to apply for registration, rather than a permit.

#### 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? Any unit, part, or division or local government that operates an air contaminant source required to apply for a permit or registration under 401 KAR 52:020, 52:030, 52:040, or 52:070 would use the forms incorporated by reference in this administrative regulation. The Division for Air Quality will use the forms incorporated by reference in this administrative regulation to permit and register air contaminant sources in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 40 C.F.R. Part 70.

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 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 proposed amendment to the administrative regulation will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's operating budget will be used to administer the permitting program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer the permitting program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for permit applications is contained in 40 C.F.R. 70.5(c).

2. State compliance standards. This administrative regulation contains permit and registration forms used by sources subject to 401 KAR 52:020, 52:030, 52:040, and 52:070.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 70.5(c) requires information to be submitted in a standard application form.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The requirement for air contaminant sources to use the same forms for permitting and registration is different than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The cabinet is requiring the use of the same forms for permitting and registration to ensure consistency in protecting human health and the environment.

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

**401 KAR 52:070. Registration of air contaminant [designated] sources.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 60, 61, and 63

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~authorizes~~[requires] the [Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. ~~[There is no federal mandate for this administrative regulation.]~~ This administrative regulation establishes the procedure for the registration of [designated] air contaminant sources in Kentucky.

Section 1. Applicability. (1) This administrative regulation shall apply to:

(a) A source~~[(1) Sources]~~ that ~~has~~[emit or have] the [potential to emit (PTE)]:

1. ~~[(a)]~~ Two (2) tpy or more but less than ten (10) tpy of a HAP;

2. ~~[(b)]~~ Five (5) tpy or more but less than twenty-five (25) tpy of combined HAPs; or

**3. Ten (10) tpy or more but not more than twenty-five (25) tpy of a regulated air pollutant subject to an applicable requirement that does not specify the method for achieving compliance;**

**4. Ten (10) tpy or more but less than 100 tpy of a regulated air pollutant subject to an applicable requirement that clearly specifies the method of compliance; or**

**5. Ten (10) tpy or more but less than 100 tons per year of a regulated air pollutant for which there is no applicable requirement~~[More than five (5) tpy but less than twenty-five (25) tpy of a regulated air pollutant that is not a HAP];~~ or**

(b) A source~~[(c)]~~ For other regulated air pollutants:

1. Ten (10) tpy or more but less than twenty-five (25) tpy of a pollutant subject to an applicable requirement that does not specify the method for achieving compliance;

2. Ten (10) tpy or more but less than 100 tpy of a pollutant subject to an applicable requirement that clearly specifies the method of compliance; or

3. Ten (10) tpy or more but less than 100 tons per year of a pollutant for which there is no applicable requirement; or

~~[(2) Sources]~~ that ~~has~~ the potential to emit less than the cutoffs in paragraph (a) of this subsection ~~[(1) of this section]~~ but ~~is~~[are] subject to an applicable requirement in 40 C.F.R. Parts 60, 61, or 63.

(2) This administrative regulation shall not apply to:

(a) A source required to be permitted pursuant to 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040; or

(b) A source exempt pursuant to Section 2 of this administrative regulation.

Section 2. Exemptions. (1) The following sources shall be exempt from this administrative regulation:

(a) ~~A source~~[Sources that are required to be permitted under 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040;

~~(b) Sources]~~ that ~~emits~~[emit] only nonprocess fugitive emissions;

~~(b) A source~~[(c) Sources] subject only to the requirements of 40 C.F.R. 60.530 to 60.539b, (Subpart AAA), Standards of Performance for New Residential Wood Heaters;

(c) A source subject only to the requirements of 40 C.F.R. 60.5472 to 60.5483, (Subpart QQQQ), Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces; or

(d) A sawmill that produces[Sawmills that produce] only rough-cut or dimensional lumber from logs and ~~that~~[which] ~~has~~[have] a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an applicable requirement in 40 C.F.R. Part 60 or 401 KAR Chapters 59 or 61.

(2) The following activities shall be exempt from this administrative regulation:

(a) Use of a vehicle[Vehicles] [used] for the transportation of passengers or freight;

(b) Use of a publicly-owned road[roads];

(c) An asbestos demolition or renovation operation[operations] subject only to an applicable requirement in 401 KAR Chapter 58;

(d) An open burning covered under 401 KAR 63:005; or[and]

(e) An activity[Activities] or emission unit[units] contained in the ["List of Trivial Activities"], which the cabinet shall maintain and make available:

1. On request by calling the Division for Air Quality, Permit Support Section, at (502) 564-3999; and

2. On the Internet at: <http://air.ky.gov>.

Section 3. General Provisions. (1) ~~A source~~[Sources that are] subject to this administrative regulation shall:

(a) Register with the cabinet;

(b) Comply with all applicable requirements; and

(c) 1. Allow an authorized representative[representatives] of the cabinet to enter the premises at all reasonable times to:

a. ~~[To]~~ Access and copy any records required by this administrative regulation;

b. ~~[To]~~ Inspect any facility, equipment (including air pollution control equipment), practice, or operation; and

c. ~~[To]~~ Sample or monitor substances or parameters to determine compliance with applicable requirements.

2. Reasonable times shall be:

a. During all hours of operation;

b. During normal office hours; or

c. During an emergency.

(2) ~~A source~~[Sources] that ~~is~~[are] located in an ozone nonattainment area or ozone maintenance area that ~~is subject to this administrative regulation and~~ has [areas and emit or have] the potential to emit twenty-five (25) tpy or more of [twenty-five (25) tpy or more of] VOC or NO<sub>x</sub> shall submit an annual emission certification as follows:

(a) During the first quarter of each calendar year, the cabinet shall survey the source[these sources] to determine [their] actual emissions during the preceding calendar year and the source shall:

1. Make the appropriate additions or corrections to the survey;

and

2. Return the updated survey to the cabinet within thirty (30) days of the date that the survey is mailed to the source. For this response:

a. Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation; and

b. If no response is received by the deadline, the cabinet shall estimate the actual emissions based on prior history and other relevant information that is available; and

(b) Failure of the cabinet to notify a source under this subsection shall not relieve the source from the obligation to submit an emissions statement.

(3) The cabinet may require registered sources to demonstrate



compliance with applicable requirements.

Section 4. When to Apply for Registration[Register]. (1) New sources. A source[Sources] that commences[commence] construction after the effective date of this administrative regulation shall submit a complete application[a registration form] to the cabinet prior to commencing construction.

(a) A source may commence construction immediately upon submittal of a complete application, as required by Section 7 of this administrative regulation[registration form].

(b) The cabinet shall review the application[registration form] and shall notify the source within sixty (60) days of receipt that:

1. A permit or registration is not required;

2. The application[registration] as submitted is accepted, and the source is a registered source; or

3. The source is required to obtain a permit and is required to take the specified action.

(2) Existing registered sources. A source[Sources] that is[are] registered with the cabinet and plans[plan] to reconstruct or modify shall comply with the following:

(a) A source[Sources] that remains[remain] eligible for registration after the change:

1. Shall submit a complete application, as established in Section 7 of this administrative regulation[a registration form] to the cabinet prior to commencing reconstruction or modification; and

2. May commence reconstruction or modification immediately upon submittal of the complete application; or[registration form]

(b) A source[Sources] that is[are] not eligible for registration after the change shall:

1. Submit a complete[an] application pursuant to[under] 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040, as applicable; and

2. Obtain the appropriate permit prior to commencing reconstruction or modification.

Section 5. Application[Registration] at the Cabinet's Request.

(1) Upon request by the cabinet, a source that has commenced construction or operation without a permit or registration shall submit a complete application[a registration form] within thirty (30) days of request.

(2) The cabinet shall review the application[registration form] and within sixty (60) days of receipt:

(a) Shall notify the source that a permit or registration is not required; or

(b) If a permit or registration is required, shall specify the action the source is required to take, and may issue a notice of violation.

Section 6. Rescinding an Existing Permit. (1) A source that has a permit and is eligible for registration may request that the cabinet rescind its permit by submitting:

(a) A complete application, as established in Section 7 of this administrative regulation[registration form]; and

(b) A letter requesting the cabinet to rescind the permit, along with supporting documentation that provides evidence that the source complies with[meets] the requirements for registration.

(2) The cabinet shall review the request and shall notify the source within sixty (60) days of receipt that the request is:

(a) [The request is] Approved and the permit has been rescinded; or

(b) [The request is] Denied and shall specify the reason for denial and any action the source is required to take.

Section 7. How to Apply for Registration[Register]. (1) Application[Registration] shall be made using the applicable forms DEP7007AI through DEP7007HH, incorporated by reference in 401 KAR 52:050.

(2) Complete applications shall be submitted to the Kentucky Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601.:

(a) Form DEP7039A, which is incorporated by reference in Section 8 of this administrative regulation; or

(b) Form DEP7105 for gasoline dispensing facilities which are

subject to 401 KAR 59:174.

(3) ~~Completed registration forms shall be submitted to Kentucky Division for Air Quality, Attn: EIS Section, 300 Sower Boulevard, Frankfort, Kentucky 40601.~~

Section 8. Incorporation by Reference. (1) "Form DEP7039A, Minor Source Registration", May 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 564-3999;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 15, 2018 at noon

CONTACT PERSON: Cassandra Jobe, Supervisor, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, email [cassandra.jobe@ky.gov](mailto:cassandra.jobe@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedure for the registration of an air contaminant source in the Commonwealth of Kentucky that has the potential to emit (PTE) a regulated air pollutant that meets the minimum threshold requirements and is not required to be permitted pursuant to 401 KAR 52:020, 52:030, or 52:040.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to ensure that applications for registered sources contain the information necessary to determine applicability for federal and state regulations to new and existing air contaminant sources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures for the registration of air contaminant sources.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing requirements for registration of air contaminant sources.

(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 proposed amendment retains the threshold for VOC and NOx emissions in ozone nonattainment and maintenance areas, makes amendments to be consistent with KRS 13A, and retains the applicability requirements in Section 1.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment is necessary to be consistent with the requirements of KRS 13A, and to not be overly burdensome by requiring an emission survey of sources with less than 25 tpy of VOC or NOx.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by making amendments to be consistent with KRS 13A and requiring information from air contaminant sources that are not permitted in accordance with 401 KAR 52:020, 52:030, or 52:040.

(d) How the amendment will assist in the effective administration of statutes: The proposed amended administrative regulation will assist in the effective administration of the statute by requiring air contaminant sources to submit information to the cabinet, which will allow the cabinet to accurately determine the applicability of state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The proposed administrative regulation affects any air contaminant source within the Commonwealth of Kentucky that is not required to apply for a permit pursuant to 401 KAR 52:020, 52:030, or 52:040, and meets the applicability criteria established in Section 1 of the proposed amendment to the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Air contaminant sources will be required to submit an application to the cabinet in accordance with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation will be the cost of completing the required application forms that are incorporated by reference in 401 KAR 52:050.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, entities will be registered or permitted, as appropriate. This will help regulated entities to know the applicable requirements for the air contaminant source, and improve compliance with those requirements. This amendment will also lead to continued improvement in air quality in Kentucky.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The Division will not incur any additional costs on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The proposed administrative regulation requires air contaminant sources whose emissions meet specific threshold criteria to submit an application to the cabinet.

#### 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 Division for Air Quality will continue to process applications from air contaminant sources in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120

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 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 proposed administrative regulation will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The Division's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division's current operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### LABOR CABINET

#### Kentucky Workers' Compensation Funding Commission (Amended After Comments)

#### 803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 49.220 [KRS 131.340], 342.0011, 342.122, 342.1221, 342.1222, [342.1223(2)(g)], 342.1231, 342.1223, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-980

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWFCF) to promulgate administrative regulations. This administrative regulation provides the procedures and forms to be used to report and remit special fund assessments. KRS 342.1223(2)(g) requires the KWFCF to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. This administrative regulation identifies audit expenses and provides procedures for collection of assessment, expenses, and defines penalty and interest procedures.

Section 1. Definitions. (1) "Actual physical receipt by the KWFCF" means: Physical delivery to [Actual-physical to the office of] the Funding Commission office prior to January 1, 2020; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWFCF account; or

2. Prior to January 1, 2020, physical [Physical] delivery of payment to the office of the Funding Commission.

(2) "Assessment Payer" is defined by KRS 342.1231(10).

(3) [(2)] "Board" means, unless otherwise specified, the Board of Directors [board-of-directors] of the Kentucky Workers' Compensation Funding Commission.



(4) [(3)] "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)(b).

(5) [(4)] "Insurance carrier" is defined by KRS 342.0011(22).

(6) [(5)] "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(7) [(6)] "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).

(8) [(7)] "KWCF" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(9) [(8)] "Premium", for each employer carrying one's [his] own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).

(10) [(9)] "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).

(11) [(10)] "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).

(12) [(11)] "Premiums received":

(a) For group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred;

(b) For insurance companies, is defined by KRS 342.0011(25)(a).

(13) [(12)] "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(14) [(13)] "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(15) [(14)] "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(16) [(15)] "SIC code" is defined by KRS 342.0011(29) now known as NAICS code.

(17) [(16)] "Special fund assessment" means the assessment established in KRS 342.122.

## Section 2. Special Fund Assessment.

(1) Special fund assessment shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. Sec., 901-945, for an insurance policy providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. Sec. 901-945, for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901-980 coverage defined as USL&H Manual Premium +/- the premium applicable of all rates/factors/and fixed expenses; and

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy with provisions for deductibles effective on or after January 1, 1995, the premium upon which a special fund assessment is imposed for insurance companies shall not include schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(5)(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or return premiums at the rate in effect on the effective date of the group self-insurance year for which the premium was received or

returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies, in accordance with KRS 342.122(4).

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years, [i]n accordance with the provisions of KRS 342.122(4).

(e) Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f) 1. Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.

2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(9) (a) Employers self-insuring Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of [executive director of the Office of] Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments shall be paid to the KWCF each calendar quarter.

(10) The premium calculated by the Commissioner of the Department [executive director of the Office] of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11) (a) Special fund assessments shall be paid quarterly, in accordance with KRS 342.122(2).

(b) Prior to January 1, 2020, if the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable, if not postmarked in accordance with KRS 342.122(2), shall be sent to the KWCF in advance so as to be received by the KWCF no later than close of business, on the first business day immediately following the weekend due date. After January 1, 2020, assessment is due and payable in accordance with KRS 342.122 (2)(b).

(12)(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established by

KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that established by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured in accordance with KRS 342.1231(7) and (8).

(b) If, after good faith efforts, the excess cannot be returned to the insured in accordance with KRS 342.1231 (7) and (8), the excess shall be remitted to the KWCFC.

(c) An insurance carrier shall not retain special fund assessments in excess of those established by KRS 342.122 and this administrative regulation.

(13) The assessment payer will be notified if proof of refund to insured has not been timely provided or escheated to the KWCFC per KRS 342.1231.

(14) When documentation is received by the KWCFC providing refund to insured information:

(a) Penalty and interest will be calculated; and

(b) The assessment payer will be notified of the additional amount due.

### Section 3. Penalty and Interest.

(1) The KWCFC Board or its designee may waive part or all of the penalty, but not the interest, in accordance with KRS 342.1221.

(a) The designee may waive part or all of the penalty, if under 5,000 dollars, in the absence of the KWCFC Board of Directors.

(b) If an assessment payer is not satisfied with the decision made by the designee, an appeal may be submitted within thirty (30) days from the date of mailing of the decision to the Board of Directors of the KWCFC for final ruling.

(c) If an assessment payer is not satisfied with the decision made by the KWCFC Board of Directors, an appeal may be submitted to the Kentucky Claims Commission within thirty (30) days from the date of mailing of the final ruling.

(2) The assessment payer will receive notification of past due additional assessment, penalty and interest, and expenses. When payment is received by the KWCFC:

(a) Penalty and interest will be calculated; and

(b) Notification will be sent to the assessment payer of the additional amount due.

### Section 4. Refunds.

(1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)(a) Assessment Payers [Taxpayers] may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.

(b) The assessment payer [taxpayer] shall submit with the claim all documents required to support the claim.

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

### Section 5. Audits; General.

(1) In accordance with KRS 342.1223(2)(g), the Kentucky Workers' Compensation Funding Commission shall conduct audits independently or in cooperation with the Department of Labor or the Finance and Administration Cabinet of all entities subject to the special fund assessments established by KRS 342.122.

(2)(a) Until the initial audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the assessment payer per KRS 342.1231(8). [taxpayer.

(b) After completion of the initial audit, supporting documentation and records shall be maintained for five (5) years from the date of the last Funding Commission audit or (5) years from the date that the premium and assessment was reported or refund or credit was taken, whichever is later.]

(3) All necessary and reasonable expenses incurred by the

KWCFC in conducting an audit shall be reimbursed to the KWCFC by the assessment payer audited.

(4) Expenses to be reimbursed shall include:

(a) Travel Expenses:

1. Meals;

2. Lodging;

3. Transportation;

4. Parking; and

5. Incidentals; and

(b) Labor expenses:

1. Preparation for the audit;

2. Travel;

3. Finalizing of the audit; and

4. Preparation of written reports and correspondence.

(5) KWCFC employees shall be reimbursed for all out-of-pocket expenses they incurred while conducting audits.

(6) Except for air transportation, meals and mileage, expenses shall be reimbursed at actual cost to employees.

(7) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.

(8) Meals shall be reimbursed at actual cost not to exceed fifty-five (55) dollars per day.

(9) Mileage for the use of privately owned auto shall be reimbursed at the rate established in 200 KAR 2:006, Section 7(4)(a).

### Section 6. Audits; Insurance Companies.

(1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, [including:] on Form KWCFC-05, (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies). (a) Writing company's indicator;

(b) Policy number;

(c) Insured's name;

(d) Transaction code;

(e) Accounting date (YY/MM/DD);

(f) Policy effective date (YY/MM/DD);

(g) Invoice date (YY/MM/DD);

(h) Premium;

(i) Special fund assessment; and

(j) Total (premium and special fund assessment).]

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department [Office] of Insurance;

(c) A complete listing of:

1. Current filings with the Kentucky Department of Insurance;

2. [(e) A listing of] Kentucky policies containing written premium written off as a bad debt;

3. [(d) A listing of policies] Policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

4. [(e) A complete list of sample] Sample policies requested by Funding Commission;

5. [(f) A complete list of deductible] Deductible policies written nationwide. This list shall contain at a minimum the policy number, insured's name, and policy effective date;

6. [(g) A complete listing of deductible] Deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs; and

7. [(h) A complete listing of deductible] Deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating

credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation; and

(d) [(f)] All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system; and

(d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections Report as originally filed with KWCFC.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy;

(b) Use of audit sampling techniques;

(c) Verification and reconciliation to NAIC reports; and

(d) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

#### Section 7. Audits; Group Self-insurers.

(1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period on Form KWCFC-06 Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer. [(a) Group self-insurer's indicator;

(b) Policy or member number;

(c) Insured's name;

(d) Transaction code;

(e) Accounting date (YY/MM/DD);

(f) Member's effective date (YY/MM/DD);

(g) Effective date of self-insurance year;

(h) Invoice date (YY/MM/DD);

(i) Premium;

(j) Special fund assessment; and

(k) Total (premium and assessment).]

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers' Claims; [Office of Workers' Claims;]

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims; [Office of Workers' Claims;]

(d) A complete list of sample policies or agreements requested by the Funding Commission; and

(e) All other documents necessary to support reported premiums and assessments.

(3) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into the policy or premium management system; and

(c) The dates upon which these rates became active in the policy or premium management system.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members'

account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of Workers' Claims' reports; and [Office of Workers' Claims' reports;]

(e) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of Workers' Claims [Office of Workers' Claims-] upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

#### Section 8. Audits; Individual Self-insurers.

(1) Upon request, self-insurers shall provide the Funding Commission with the following:

(a) Loss experience reports;

(b) Payroll records;

(c) ~~Kentucky UI-3;~~

(d) ~~Federal Form 941 "Employer's Quarterly Federal Tax Return";~~

(e) ~~Federal Form 940 "Employer's Annual Federal Unemployment Tax Return"; and~~

(c) All back up documentation request for each audit period; and

(d) Other information necessary because of the unique nature of the entity being audited. [(f) ~~Other information necessary because of the unique nature of the entity being audited.~~]

(2) The Funding Commission shall utilize one (1) or more of the following procedures in completion of audits:

(a) Detailed examination of all required records;

(b) Use of audit sampling techniques; and

(c) Other procedures necessary because of the unique nature of the entity being audited.

Upon completion of an audit the Funding Commission shall not re-audit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the information previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

#### Section 9. Audits; Invoice, Protest and Resolution.

(1) The Funding Commission shall send to the assessment payer [taxpayer] a notice of any assessment assessed by the Funding Commission.

(2) A summarized invoice consisting of totals for "labor", "travel" and "all other" expenses shall be submitted to the assessment payer as soon as practicable after completion of the audit. An itemized invoice shall be available upon request.

(3)(a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.

(b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

(c) 1. Upon written request, the Funding Commission shall extend the time for filing the supporting statement if it is determined that the delay is necessary and unavoidable.

2. The refusal of an extension may be reviewed in the same manner as a protested assessment.

(4) [(2)] After a timely protest has been filed, the assessment payer [taxpayer] may request a conference with the Funding Commission staff.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer [taxpayer] may appear in person or by representative.

(c) Further conferences may be held by mutual agreement.

(5) [(3)] For those issues not resolved during the conferences described in subsection (2) of this section, the assessment payer [taxpayer] may request a conference with the Funding Commission's Board of Directors.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer [taxpayer] may appear in person or by representative.

(6) [(4)] After considering the assessment payer's [taxpayer's] protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer. [taxpayer.] The ruling shall state:

(a) That it is the final ruling of the Funding Commission and shall generally state the issues in controversy;

(b) The Funding Commission's position; and

(c) The procedure for appeal to the Kentucky Claims Commission [Kentucky Board of Tax Appeals,] in accordance with [KRS 131.340] KRS 49.220 and 802 KAR 1:010.

(7) [(5)] (a) The assessment payer [taxpayer] may request in writing a final ruling any time after filing a timely protest and supporting statement.

(b) If a final ruling is requested, the Funding Commission shall issue the ruling within sixty (60) days or at the next Board of Directors meeting whichever is later, from the date the request is received by the Funding Commission. [thirty (30) days from the date the request is received by the Funding Commission.]

(8) [(6)] After a final ruling has been issued, the assessment payer [taxpayer] may appeal to the Kentucky Claims Commission [Board of Tax Appeals] pursuant to the provisions of KRS 49.220. [KRS 131.340.]

#### Section 10. Reports.

(1) Insurance companies, group self-insurers, and individual self-insurers shall file a Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.

(a) The quarterly premiums report and assessment due and payable shall be received by [in the office of] the KWCFC no later than thirty (30) days following the end of the calendar quarter.

(b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through electronic filing and payment; and prior to January 1, 2020 actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.

(2) Insurance companies shall file Form KWCFC-01 (Quarterly Premiums Report).

(3) Employers carrying their own risk shall file Form KWCFC-02 (Quarterly Premiums Report).

(4) Group self-insurers shall file Form KWCFC-03 (Quarterly Premiums Report).

(5)(a) Every insurance company, group self-insurer, and individual self-insurer providing workers' compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC electronically [on electronic diskettes] and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05 (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies), Form KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer), or Form KWCFC-07 (Annual Audit and Collections Report, Data Reporting Instructions Individual Self Insurer), as applicable. [(6)(a) Every group self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instruction incorporated by reference in Form KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer).

(7)(a) Every individual self-insurer providing workers

compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-07 (Annual Audit and Collections Report, Data Reporting Instructions Individual Self Insurer).]

(6) [(8)] An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Non-writer Statement) [(Nonwriter Statement)] to the Kentucky Workers' Compensation Funding Commission, electronically or by mail, 42 Mill Creek Park, [42 Millcreek Park, P.O. Box 1220,] Frankfort, Kentucky 40601 [40602] no later than April 30th following the end of the calendar year. **Section 12. Jeopardy Assessment.**

**(1) The Funding Commission may issue a Jeopardy Assessment Audit in the following instances:**

**(a) In the event an assessment payer has hindered or evaded the audit process;**

**(b) Has done any other act rendering the proceedings to assess or collect assessment partly or wholly ineffective;**

**(c) Delayed providing information; or**

**(d) Provided incorrect information.**

**(2) A jeopardy assessment will be considered a completed audit by the KWCFC and the assessment payer will receive invoice in accordance with KRS 342.1221.**

Section [14] **[12] 11.** Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KWCFC-01 (Quarterly Premiums Report), (08/2018) [(03/2010)]";

(b) "KWCFC-02 (Quarterly Premiums Report), (08/2018) [(03/2010)]";

(c) "KWCFC-03 (Quarterly Premiums Report), (08/2018) [(03/2010)]";

(d) "KWCFC-04 (Nonwriter Statement), (08/2018) [(03/2010)]";

(e) "KWCFC-05 (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies), (08/2018) [(03/2010)]";

(f) "KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer), (08/2018) [(03/2010)]"; and

(g) "KWCFC-07 (Annual Audit and Collections Report, Individual Self-Insurer), (08/2018) [(03/2010)]";

(h) "KWCFC-08 (Quarterly Premiums Report), (08/2018).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, [42 Millcreek Park, P.O. Box 1128, Frankfort, Kentucky 40602-1128,] Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Kentucky Workers Compensation Funding Commission Web site <http://www.kwcfc.ky.gov/>.

This is to certify that the executive director has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.1224(5).

REUBEN JONES, Executive Director

JUDY LONG, Chair, Board of Directors

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 15, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

CONTACT PERSONS: Estee Jackson, Administrative Services Officer, Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1708, fax (502) 573-4923, email [estee.jackson@ky.gov](mailto:estee.jackson@ky.gov); or Olivia Orrender, Audit Review Manager, Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 782-1711, email [Olivia.orrrender@ky.gov](mailto:Olivia.orrrender@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Estee Jackson, phone 502-782-1708, email [estee.jackson@ky.gov](mailto:estee.jackson@ky.gov)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines and provides clarification to the statutory requirements of the Kentucky Workers' Compensation Funding Commission per KRS 342.1223.

(b) The necessity of this administrative regulation: With this review the Funding Commission has deleted language relating to old policy and procedures, as well as, updated language to follow legislation enacted in 2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Each section provides information to assessment payers to include the procedures for collection, audit, penalty and interest, etc. per KRS 342.1223.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow the Funding Commission to be more effective by locating all relevant guidance in one user friendly reg. With this regulation amendment assessment payers are provided a clearer understanding of current policies and procedures to meet the statutory requirements put forth in KRS 342.

(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: New language has been inserted pursuant to legislation passed in 2018 to clarify reporting and auditing requirements.

(b) The necessity of the amendment to this administrative regulation: Inserted language updates existing regulation to align with enacted legislation and provides direction to assessment payers on current policies.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342 puts forth requirements to the Funding Commission to audit entities who pay a special fund assessment. This regulation further defines to assessment payers the standards for reporting, collection, and audit procedures.

(d) How the amendment will assist in the effective administration of the statutes: Assessment payers will have a clearer understanding of the Funding Commissions statutory authority and auditing directive.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurance companies, group self-insured and self-insured individuals providing workers' compensation insurance in the state of Kentucky that are required to pay the special fund assessment as required in KRS 342.122.

(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 new actions are required of assessment payers, who will now more easily understand the Funding Commissions regulatory process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are being applied to assessment payers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assessment payers will have a better understanding and find it easier to comply with the Funding Commission's statutory authority and auditing directive.

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

(a) Initially: This administrative regulation will not add any further cost to the administrative body.

(b) On a continuing basis: This administrative regulation will not add any further cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not add any further cost to the

administrative body.

(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 will not add any further cost to the administrative body.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Language to define audit expenses that shall be reimbursed by the assessment payer audited per KRS 342.1231 has been inserted into this regulation. This expense language was previously in KAR 30:020 which has been repealed. Legislation enacted in 2018 states expenses are now subject to penalty and interest which is defined within this regulation.

(9) TIERING: Is tiering applied? Yes, KAR 803 30:010 includes tiering with respect to the types of assessment payers subject to assessment as defined in KRS 342.122.

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? Kentucky Workers' Compensation Funding Commission (KWCFC).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1231, 342.1223, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-980.

(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. This regulation will not affect expenditures for the KWCFC, but may increase revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of additional revenue to be generated by this administrative regulation is uncertain because penalty and interest will not accrue if assessment payers are not penalized.

(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 amount of additional revenue to be generated by this administrative regulation is uncertain because penalty and interest will not accrue if assessment payers are not penalized.

(c) How much will it cost to administer this program for the first year? 803 KAR 30:010 does not establish a program which requires cost to administer.

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. 803 KAR 30:010 does not establish a program which requires cost to administer.

Revenues (+/-): Increase

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation expands on directives in HB388 which was passed by the General Assembly in 2018.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amended After Comments)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS 13B, 199.011, 199.640-199.680, 199.801, 600.020(25), 605.090(1)(b), (d), 610.110, 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for ~~nonprofit~~ child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations prescribing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

#### Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3)(2).
- (2) "Child-caring facility" or "facility" is defined by KRS 199.011(5)~~199.641(4)(b)~~.
- (3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).
- (4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b)[means the Department for Community Based Services or the department's agent].~~(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.~~
- (5) "Emergency shelter" is defined by KRS 600.020(25).
- (6) "Gatekeeper" means the department or agent responsible for:
  - (a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and
  - (b) Other administrative duties in the areas of:
    1. Assessment;
    2. Placement;
    3. Performance measurement; and
    4. Consultation regarding children and their needs.
- (7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.
- (8) "Initial level of care" means a level of care:
  - (a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
  - (b) That is time-limited and effective for the first six (6) months of a child's placement.
- (9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.
- (10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation.
- (11) "Model program cost analysis" is defined by KRS 199.641(1)(c)(d).
- (12) "Placement coordinator" means an individual whose responsibilities are described in KRS 199.801.
- (13) "Reassigned level of care" means a level of care that is:
  - (a) Determined by the gatekeeper after a child's level of care expires; and
  - (b) Authorized for a specific period of time.
- (14)~~(13)~~ "Time study" is defined by KRS 199.641(1)(d)(e).
- (15)~~(14)~~ "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or

child-placing agency, of the child's case record and existing documentation for the purpose of:

- (a) Identifying the child's current level of functioning; and
- (b) Assigning the appropriate level of care.

#### Section 2. Referral Process for Level of Care System Placement.

(1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age when:

- (a) The child enters the level of care system;
  - (b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or
  - (c) A child's level of care expires and assignment of a new level is necessary.
- (2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:
- (a) Identifying data;
  - (b) Individual strengths and limitations;
  - (c) Daily living skills;
  - (d) Physical health needs, including documentation indicating the child's medically complex status if the child is medically complex;
  - (e) Mental health needs including:
    1. Behavioral health; and
    2. Diagnosis and treatment;
  - (f) Medications;
  - (g) History of substance abuse, high risk, or other significant behavior including:
    1. Sexual acting out; and
    2. Legal history, status, or delinquency behavior patterns;
  - (h) Out-of-home care placement information including:
    1. Reason for entering out-of-home care;
    2. History of abuse, neglect, or dependency;
    3. Current custody status;
    4. Current and previous placements; and
    5. Permanency goal;
  - (i) Social supports;
  - (j) Educational functioning, grade level, and any special educational need;
  - (k) Religious background and practices; and
  - (l) If a child has an IQ of seventy (70) or above:
    1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);
    2. Child Behavior Checklist For Ages 6-18 (Achenbach); or
    3. Another tool pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) If a child needs placement within the level of care system, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the ~~district~~ placement coordinator.

(b) The ~~district~~ placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

- (a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:
  1. As assigned by the gatekeeper within the previous six (6) months; or
  2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;
- (b) Arrange transportation for the child to the placement; and
- (c) Notify the ~~district~~ placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

- (a) Submit a level of care packet to the gatekeeper for a child



who does not have a current level of care assignment; and

(b) Inform the [district] placement coordinator of the location and date of placement.

(6) The [district] placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older or any child designated as medically complex:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; or

2. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, to the department and the child-caring facility or the child-placing agency;

(3) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency;

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and

(7) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the private child-caring facility or private child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child shall be a child who:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to

maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence if the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child shall be a child who:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child shall be a child who:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates.

(1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(c)[(d)].

(b) Each private ~~[-nonprofit]~~ child caring facility and child-placing agency shall report to the cabinet annually, on the DPP-888, cost report and time study and instructions.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private ~~[-nonprofit]~~ child-caring facilities and child-placing agencies; and

b. Level of care of children served by private ~~[-nonprofit]~~ child-caring facilities and child-placing agencies that contract with the cabinet.

(b) 1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price

Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;
2. Child safety after reunification with the child's family;
3. Adequate educational support;
4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
5. Increased placement stability during the service period;
6. Increased achievement of permanency goals; and
7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection; and
2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) When the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

#### Section 6. Residential Care.

(1) A child-caring facility in the levels of care system shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

- (a) Level I – \$51.19;
- (b) Level II – \$61.52;
- (c) Level III – \$109.71;
- (d) Level IV:

1. ~~\$183.00~~[\$175.87]; or

2. ~~\$193.50~~[\$183.00] on or after ~~August~~[October] 1, ~~2018~~[2016]; and

(e) Level V:

1. ~~\$236.60~~[\$218.99]; or

2. ~~\$256.70~~[\$236.60] on or after ~~August~~[October] 1, ~~2018~~[2016].

#### Section 7. Emergency Shelter Care.

(1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) For a child-caring facility with a treatment license:

1. ~~\$115.31~~ per day[~~for a child-caring facility with a treatment license~~]; or

2. ~~\$126.80~~ per day on or after August 1, 2018; or

(b) For a child-caring facility without a treatment license:

1. ~~\$101.41~~ per day; or

2. ~~\$111.60~~ per day on or after August 1, 2018[~~for a child-caring facility without a treatment license~~].

(2) If a ~~child with an assigned level of care~~[~~child's treatment placement is disrupted and the child~~] enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care [~~for residential care during the previous placement,~~] pending results of the next-scheduled utilization review;

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child's individual treatment plan.

#### Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) The basic daily rate for foster care shall be \$44.82.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - \$76.10;

(b) Level III - \$83.16;

(c) Level IV - \$101.23; and

(d) Level V - \$139.96.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

#### Section 10. Provider Requirements.

(1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;
  2. Clinical services including:
    - a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and
    - b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and
  3. Support services that:
    - a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;
    - b. Allow a child to cope with the disability or distress;
    - c. Provide access to improving the educational or vocational status of the child; and
    - d. Provide essential elements of daily living;
  - (c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:
    1. For a child who has an IQ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation; and
    2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:
      - a. Consisting of:
        - (i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or
        - (ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and
      - b. By the first utilization review due date and every twelve (12) months thereafter; and
    3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):
      - a. On a quarterly basis, for a private child care residential placement; or
      - b. On a semiannual basis for a foster care placement;
    - (d) Provide outcomes data and information as requested by the gatekeeper; and
    - (e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:
      1. The Council on Accreditation; or
      2. The Joint Commission on Accreditation for Healthcare Organizations.
    - (2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.
- Section 11. Utilization Review and Authorization of Payment.
- (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.
  - (2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:
    - (a) Suspend payments until the necessary information has been submitted to the gatekeeper;
    - (b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or
    - (c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.
  - (3) If the child-caring facility makes timely submission of the reports, and if the:

- (a) Level of care remains unchanged, payments shall continue unchanged;
- (b) Level of care is reduced, and the:
  1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or
  2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or
- (c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.
- (4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:
  - (a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or
  - (b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day, the therapeutic foster care rate for the assigned level shall apply.
- (5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

#### Section 12. Redetermination.

- (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:
  - (a) New information which supports the request for a new level; and
  - (b) Completion of the "request for redetermination" section of one (1) of the following forms:
    1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;
    2. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;
    3. CRP-4, Children's Review Program Notice of Level of Care Redetermination;
    4. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or
    5. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, for a reassignment.
- (2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:
  - (a) The date of the most recent utilization review due date; or
  - (b) The date of admission.
- (3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:
  - (a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or
  - (b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.
- (4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment.

(1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(l) of this administrative regulation.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution.

(1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", 6/01;

(c) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 10/18[11/14];

(d) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 11/14;

(e) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 10/18[11/14];

(f) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment", 10/18[11/14];

(g) "CRP-7, Children's Review Program Application of Level of Care Payment (ALP)", 11/14;

(h) "DPP-114, Level of Care Schedule", 8/18[5/17];

(i) "DPP-886, Private Child Care Client Inter-agency Referral Form", 10/18[10/04];

(j) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", 10/18[10/04]; and

(k) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", 1990.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at 4 p.m.

CONTACT PERSON: Chase Coffee, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child in the custody of the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a private child care placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(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 increases the payment rates for children who are assessed as having levels of care IV and V, and who are placed with a private residential child-caring facility; and children who are placed in emergency shelters. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A, including alignment with 2018 Ky. Acts ch. 159 (a.k.a., House Bill 1). The amended-after-comment version makes technical corrections to the administrative regulation and updates to the incorporated materials as a result of agency comments and comments from the provider association, the Children's Alliance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust reimbursement for children placed in residential child-caring facilities to better reflect actual costs of providers. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. Without these placement options, children risk placement in more costly, restrictive settings or, conversely, in settings that do not otherwise meet the needs of the children. The health and welfare of said children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children needing out-of-home care. Further amendment addressed technical corrections within the regulation to ensure uniformity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adjusting residential child-caring facility payment rates in accordance with 2018 Ky. Acts ch. 169.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing provider payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The cabinet maintains a monthly average of 1,287 children who are placed in emergency shelters and are assessed as needing levels of care IV or V in residential child-caring facility placements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation requires no new action on the part of regulated entities.

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

The amendment to this administrative regulation imposes no new or additional costs on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Residential child-caring facilities will benefit from the payment rate increase implemented through the amendment to this administrative regulation. The effect of the regulatory amendment will preserve the health and welfare of children in the custody of the cabinet.

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

(a) Initially: In accordance with 2018 Ky. Acts ch. 169, residential child-caring facilities, including emergency shelters, will realize payment rate increases. The cabinet has identified approximately \$7.3 million, a combination of federal, general, agency, and restricted funds, within its existing appropriations to support the rate increase.

(b) On a continuing basis: The cabinet projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(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 federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

(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: Additional funding was appropriated in 2018 Ky. Acts ch. 169.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This

administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

#### 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, specifically the Department for Community Based Services (DCBS), is 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.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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? This administrative regulation will generate no new revenues.

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

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are sustainable within appropriations. The cabinet has identified approximately \$7.3 million, a combination of federal, general, agency, and restricted funds to support the rate increase in accordance with 2018 Ky. Acts ch. 169.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding. 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:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(Amendment)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

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

- (1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);
- (2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;
- (3) For the Teacher Scholarship Program as set forth in 11 KAR 8:030, the Teacher Scholarship Application;
- (4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:
  - (a) The Free Application for Federal Student Aid (FAFSA); and
  - (b) The Early Childhood Development Scholarship Application;
- (5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:
  - (a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and
  - (b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;
- (6) For the Go Higher Grant Program as set forth in 11 KAR 5:200:
  - (a) The Free Application for Federal Student Aid (FAFSA); and
  - (b) The Go Higher Grant Program Application;
- (7) For the Coal County Scholarship Program for Pharmacy Students as set forth in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application; and
- (8) For the Kentucky Coal County College Completion Scholarship Program as set forth in 11 KAR 20:020:
  - (a) The Free Application for Federal Student Aid (FAFSA); and
  - (b) The Kentucky Coal County College Completion Scholarship Application.

Section 2. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) The "Free Application for Federal Student Aid July 1, 2019 - June 30, 2020[July 1, 2017 - June 30, 2018]" (FAFSA), October 2018[October 2016];
  - (b) The "Free Application for Federal Student Aid July 1, 2018 - June 30, 2019" (FAFSA), October 2017;
  - (c) The "KHEAA Work-Study Program Student Application", July 2001;
  - (d) The "Teacher Scholarship Application", June 2006;
  - (e) The "Early Childhood Development Scholarship

Application", April 2006;

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

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

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

(i) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011; and

(j) The "Kentucky Coal County College Completion Scholarship Application", October 2014.

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

STEPHEN L. ZEITZ, Chair

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December 26, 2018, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293. email [dbarber@kheaa.com](mailto:dbarber@kheaa.com).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Rebecca Gilpatrick, phone (502) 696-7394, email [rgilpatrick@kheaa.com](mailto:rgilpatrick@kheaa.com); and Diana Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by the Authority.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the Early Childhood Development Scholarship Program, KHEAA Work-study Program, Teacher Scholarship Program, College Access Program (CAP), Kentucky Tuition Grant (KTG), and Go Higher Grant Programs as well as the Robert C. Byrd Scholarship Program pursuant to KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890, 164.7894, 34 C.F.R. 654.30, 654.41, and 20 U.S.C. 1070d-36, 1070d-37, 1070d-38.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by prescribing the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by prescribing and incorporating the various application forms to be used by students to apply for the financial aid programs administered by the authority.



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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing regulation by specifying the latest version of the Free Application for Federal Student Aid (FAFSA) for the 2019-2020 academic year that is to be completed by applicants for participation in the student aid programs administered by the Authority during that academic year.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to require student recipients to complete the correct version of the FAFSA for the desired academic year for which aid is sought.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by specifying the version of the FAFSA applications to be used when applying for an award under one of the student aid programs administered by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the state student aid programs by requiring completion of the correct version of the FAFSA based on academic year for which an award is sought – 2018-2019 or 2019-2020 – in order to participate in said programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect all those individuals who seek to apply for student financial aid through the Authority.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those individuals who seek to participate in the various student financial aid programs administered by KHEAA will be required to complete the correct version of the FAFSA application as specified in this regulation in order to be considered for an award for a specific academic year.

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

(a) Initially: There is no cost to implement this administrative regulation.

(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: No funding source is required in order to implement this administrative regulation since it merely specifies the required version of the FAFSA to be used by program participants.

(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 amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE 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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890, 167.7894, 34 C.F.R. §654.30, §654.41, 20 U.S.C. §1070d-36, 37, 38.

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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amendment)

#### 16 KAR 2:100. Junior Reserve Officers Training Corps[and Junior Guard certification].

RELATES TO: KRS 160.380(5), 161.010, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126[161.1266] to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the Kentucky certification for instructor of the Junior Reserve Officers Training Corps.

Section 1. (1) The certificate for senior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant if the applicant has submitted a Form CA-8 and the following:

(a) A bachelor's degree from a standard college or university as defined by KRS 161.010;

(b) An official recommendation by the appropriate branch of military service;

(c) A contract for this employment by a local school district;

(d) A recommendation for certification by the local school superintendent; and

(e)[A national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and

(f)] A DD214 documenting honorable service.

(2) The certificate for senior instructor, Junior Reserve Officers Training Corp, may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of nine (9) semester hours to include:

(a) Human growth and development and learning theory;

- (b) Foundations of education; and
- (c) Career development and vocational planning.
- (3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

Section 2. (1) The certificate for junior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant if the applicant has:

- (a) Graduated high school, or its equivalence as determined by a minimum passing standard on the General Education Development Test;
- (b) Submitted an official recommendation by the appropriate branch of military service;
- (c) Submitted a contract for this employment by a local school district;
- (d) Submitted a recommendation for certification by the local school superintendent; and
- (e) ~~Submitted a national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and~~
- (f) Submitted a DD214 documenting honorable service.

(2) Initial Renewal. The certificate for junior instructor, Junior Reserve Officers Training Corps, may be initially renewed for a two (2) year period upon application to the board. The applicant shall complete and submit Form CA-2, incorporated by reference in 16 KAR 4:060, and submit verification:

- (a) By the local school superintendent of two (2) years' experience as a Junior Reserve Officer Training Corps Instructor at a local school district; and
- (b) ~~Of successful completion of the "New-to-Kentucky Teacher" Module and the "Substitute Teacher Orientation" Module found on [www.kyeducators.org](http://www.kyeducators.org). The junior ROTC instructor shall make reasonable efforts to complete the modules within the first ninety (90) days of employment with the local school district; and~~
- (c) ~~Of successful completion of:~~
  - 1. A minimum of twenty-four (24) clock hours of district-approved professional development, annually; or
  - 2. Six (6) semester hours from a standard college or university as defined by KRS 161.010 to include:
    - a. Human growth and development and learning theory;
    - b. Foundations of education; and
    - c. Career development and vocational planning.

(3) Each subsequent two (2) year renewal thereafter shall require completion by September 1 of the year of expiration of:

- (a) Six (6) semester hours selected from an associate degree program from a standard college or university as defined by KRS 161.010; or
- (b) Twenty-four (24) clock hours of district-approved professional development, annually.
- (4) Upon completion of the associate degree with at least a 2.5 grade point standing, the certificate for junior instructor, Junior Reserve Officers Training Corps, shall be renewed for a five (5) year period. Each five (5) year renewal thereafter shall require completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

(5) A junior instructor who renews the certificate for junior instructor, Junior Reserve Officers Training Corps by completing the twenty-four (24) hours of professional development annually shall not be eligible to receive the five (5) year certificate as established in subsection (4) of this section, but shall be granted a certificate of two (2) years in duration. ~~[Section 3. (1) The certificate for a senior instructor of the Junior Guard shall be issued initially for a two (2) year period if the applicant:~~

- ~~(a) Is a current member of the United States Military or has retired from the United States Military within a two (2) year period;~~
- ~~(b) Has a bachelor's degree from an accredited college or university as defined by KRS 161.010;~~
- ~~(c) Has submitted a national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application;~~
- ~~(d) Has submitted a DD214 documenting honorable service;~~
- ~~(e) Has submitted an official letter of recommendation from the~~

National Guard;

- ~~(f) Has submitted a contract for employment with a local school district; and~~
- ~~(g) Has submitted a recommendation for certification by the local school superintendent or designee.~~
- ~~(2) The certificate for the Senior Instructor of the Junior Guard may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of six (6) semester hours to include:~~
  - ~~(a) Human growth and development; and~~
  - ~~(b) Foundations of education.~~
  - ~~(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Guard.]~~

Section 3. Incorporation by Reference. (1) "Form CA-8, 10/18" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: October 8, 2018

FILED WITH LRC: November 15, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 9:00 a.m. Eastern Time at the Kentucky Department of Education, 300 Sower Blvd, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. 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: Cassie Trueblood, Policy Advisor and Special Counsel, Office of Educator Licensure and Effectiveness, 300 Sower Blvd, Fifth Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email [cassie.trueblood@ky.gov](mailto:cassie.trueblood@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassie Trueblood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Kentucky certification for instructor of the Junior Reserve Officers Training Corps.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that there are certified individuals to lead the Junior Reserve Officers Training Corps in Kentucky Schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation delineates the requirements for initial certification and renewal of certification for both senior and junior JROTC instructors.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the requirements for applicants to complete a state and federal background check. It also removes the certificate for a senior instructor of the Junior Guard.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the Education Professional Standards Board to efficiently process applications for certification. It is also necessary to remove certification for a program that is no longer recognized by the National Guard.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board is able to efficiently process applications for adjunct certification. It will also ensure that certificates are not issued for a program that is no longer recognized.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

(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: Applicants will have to submit to the Education Professional Standards Board the appropriate application form but will not be required to submit national and state criminal background checks when applying for certification. They already have to submit these checks to the school district when hired. School districts and students will not have to take any actions 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): There is no expected cost for applicants in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will no longer have to submit national and state background checks when applying for certification. School districts and students will have access to certified individuals in a timelier manner.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. All candidates for certification for instructor of the junior guard shall meet these requirements.

## 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 Education Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028 and KRS 161.030.

(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 should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

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

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of 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: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

## EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amendment)

### 16 KAR 9:040. Part-time adjunct instructor certificate.

RELATES TO: KRS 160.380(5)(c), 161.020, 161.028(1)(a), (c), 161.030, 161.046, 161.048(5), 161.120

STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030, 161.046(2), 161.048(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.046 and 161.048(5) authorize the position of adjunct instructor and require the Education Professional Standards Board to promulgate administrative regulations to establish certification requirements. This administrative regulation establishes the minimum requirements for an adjunct instructor certificate.

Section 1. Definition. "Exceptional life or work experience candidate" means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally-accepted standards in the area in which certification is sought.

Section 2. Candidate Eligibility Requirements. (1) An adjunct instructor shall meet the requirements for good moral character as required in KRS 161.120 and the following requirements relating to educational and occupational experience:

(a) An adjunct instructor employed in middle school or secondary school shall hold:

1. A bachelor's degree from a regionally accredited institution with:

a.(i) A cumulative minimum grade point average of at least 2.75[2.50] on a 4.00 scale; or

(ii) A minimum grade point average of at least 3.0 on a 4.0

scale on the last ~~thirty (30)~~~~[sixty (60)]~~ hours of credit completed, including undergraduate and graduate coursework; and

b. A major, minor, or area of concentration in the specialty subject to be taught; or

2. A master's degree in the specialty subject to be taught from a regionally-accredited institution with the minimum grade point average established in subparagraph 1.a. of this paragraph;

(b) An adjunct instructor in elementary school or early childhood education program shall hold:

1. A bachelor's degree from a regionally-accredited institution with:

a.(i) A cumulative minimum grade point average of at least ~~2.75~~~~[2.50]~~ on a 4.0 scale; or

(ii) A minimum grade point average of at least 3.0 on a 4.0 scale on the last ~~thirty (30)~~~~[sixty (60)]~~ hours of credit completed, including undergraduate and graduate coursework; and

b. A major, minor, or area of concentration in a planned program of child development or a related area; or

2. A master's degree in a planned program of child development or a related area from a regionally accredited institution with the minimum grade point average established in subparagraph 1.a. of this paragraph; and

(c) An adjunct instructor for occupation-based career and technical education shall:

1. Be a high school graduate;

2. Have at least four (4) years of appropriate occupational experience for the specialty to be taught; and

3.a. Complete the specialty area examination prerequisite as established in 16 KAR 6:020; or

b. Hold either an associate degree or technical diploma in a related area.

(2)(a) An applicant for adjunct instructor certification who does not meet the minimum academic preparation requirements established in subsection (1) of this section may apply for this certificate as an exceptional life or work experience candidate.

(b) An exceptional life or work experience candidate shall be recommended by the employing school district and complete the application process established in subsection (3) of this section.

(c) An exceptional life or work experience candidate shall include the following information as verification of exceptional qualifications in the field of endeavor to be taught or service to be practiced:

1. Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is an exceptional life or work experience candidate as defined in Section 1 of this administrative regulation and has talents and abilities commensurate with the Kentucky Teacher Standards for Preparation and Certification established in 16 KAR 1:010;

2. Documentation of achievement that may include academic and nonacademic preparation, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field or endeavor; and

3. Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional life or work experience in this field.

(3) Form CA-25 signed by the local district superintendent and approved by the local board of education shall be submitted to the Education Professional Standards Board for each adjunct instructor.

(a) The application shall be accompanied by official transcripts of all college credits earned by the prospective adjunct instructor along with documentation of any exceptional competencies or experiences submitted in support of the application.

(b) Upon receipt of the application and appropriate documentation, a candidate meeting all of the requirements shall be issued a one (1) year adjunct instructor certificate.

Section 3. Orientation Program. Each local board of education shall provide for an orientation program for the adjunct instructors employed within the district.

~~(a)[(1)]~~ A detailed description of the orientation program shall be a part of the certificate application form.

~~(b)[(2)]~~ The orientation program shall include an emphasis on student safety, district policies and procedures, and pedagogical assistance commensurate with the Kentucky Teacher Standards for Preparation and Certification established in 16 KAR 1:010.

~~Section 4.[An applicant for a part-time adjunct instructor who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.~~

~~Section 5.]~~ Incorporation by Reference. (1) "Form CA-25", 10/18/08/45, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: October 8, 2018

FILED WITH LRC: November 15, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Education, 300 Sower Blvd, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. 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: Cassie Trueblood, Policy Advisor and Special Counsel, Office of Educator Licensure and Effectiveness, 300 Sower Blvd, Fifth Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email [cassie.trueblood@ky.gov](mailto:cassie.trueblood@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassie Trueblood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for part-time adjunct instructors for individuals with exceptional life or work experience wishing to teach in a Kentucky public school.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for the qualifications for part-time adjunct instructor certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. KRS 161.048 establishes the requirements for alternative educator certification in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for part-time adjunct instructors and establishes the procedures by which an applicant may apply for teaching certification as part-time adjunct instructor.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the requirements for applicants to complete a state and federal background check. It also raises the minimum grade point average required for certification.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the Education Professional Standards Board to efficiently process applications for certification.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. KRS 161.048 defines eight (8) alternative routes to educator certification in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board is able to efficiently process applications for adjunct certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

(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: Applicants will have to submit to the Education Professional Standards Board the appropriate application form but will not be required to submit national and state criminal background checks when applying for certification. They already have to submit these applications to the school district when being hired. School districts and students will not have to take any actions 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): There is no expected cost for applicants in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will no longer have to submit national and state background checks when applying for certification. School districts and students will have access to certified individuals in a timelier manner.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. All candidates for certification for adjunct instructor shall meet these requirements.

#### 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 Education

Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, 161.030 and 161.048.

(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 should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

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

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of 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: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

#### FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

#### 103 KAR 16:270. Apportionment; receipts[sales] factor.

RELATES TO: KRS 141.120, 141.040[(5)(b)4], 141.206

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.120[(4)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.120(9)[KRS 141.120(8)] requires that all apportionable[business] income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, [the numerator of which is the property factor plus the payroll factor plus a weighted sales factor and the denominator of which is four (4)]. KRS 141.120(11)(d)[(4)(b)] authorizes the cabinet to promulgate administrative regulations providing how to determine the receipts[sales] factor used in the multi-state apportionable[business] income apportionment formula. This administrative regulation provides guidelines for determining the receipts[sales] factor of a multistate corporation.

#### Section 1. Definitions.

(1) "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

(2) "Broadcaster" means a taxpayer that is a television broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a platform distribution company.

(3) "Broadcast customer" means a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by a broadcaster.

(4) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.

(5) "Code" means the Internal Revenue Code as defined by KRS 141.010(14).

(6) "Film programming" means one (1) or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(7) "Individual customer" means a customer that is not a business customer.

(8) "Intangible property" generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and computer software, except as otherwise provided in this administrative regulation.

(9) "Place of order," means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.

(10) "Platform distribution company" means a cable service provider, a direct broadcast satellite system, an Internet content distributor, or any other distributor that directly charges viewers for access to any film programming.

(11) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.

(12) "Related member" is defined by KRS 141.205(g).

(13) "State where a contract of sale is principally managed by the customer," means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

## Section 2. Additional Principles.

(1) Year to year consistency. If the taxpayer departs from or modifies the basis for excluding or including gross receipts in the receipts factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) State to state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its Kentucky return the nature and extent of the variance.

(3) Denominator. The denominator of the receipts factor shall include the gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except gross receipts excluded under this administrative regulation.

(4) Numerator. The numerator of the receipts factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business, except gross receipts excluded under this administrative regulation.

## Section 3. Sales of Tangible Personal Property in This State.

(1) Gross receipts from sales of tangible personal property (except sales to the United States Government) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.

(2) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example. The taxpayer, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states, including Kentucky. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in Kentucky. The branch store in Kentucky is the purchaser with respect to \$25,000 of the taxpayer's sales.

(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example. The taxpayer makes a sale to a purchaser who maintains a central warehouse in Kentucky at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Kentucky constitute property delivered or shipped to a purchaser within Kentucky.

(4) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

Example. A taxpayer in Kentucky sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Kentucky pursuant to purchaser's instructions. The sale by the taxpayer is in Kentucky.

(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

Example. The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in Kentucky in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Kentucky.

Section 4. Sales of Tangible Personal Property to the United States Government. Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this administrative regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

Example (i). A taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

Example (ii). The taxpayer, as a subcontractor to a prime contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for \$1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

Section 5. Sales Other Than Sales of Tangible Personal Property: General Rules. In general, KRS 141.120(11) provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.

(1) Market-based sourcing. Receipts, other than receipts described in KRS 141.120(10) (from sales of tangible personal property) are in this state within the meaning of KRS 141.120(11) if and to the extent that the taxpayer's market for the sales is in this state. In general, the provisions in this section establish uniform



rules for:

(a) Determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state;

(b) Reasonably approximating the state or states of assignment where the state or states cannot be determined;

(c) Excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to KRS 141.120(11)(a)(4)(b)iii; excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) where the state or states of assignment cannot be determined or reasonably approximated; or excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) where the taxpayer is not taxable in the state to which the receipts are assigned as determined under KRS 141.120(3).

(2) General principles of application: Contemporaneous Records. In order to satisfy the requirements of this administrative regulation, a taxpayer's assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:

(a)1. A taxpayer shall apply the rules set forth in this administrative regulation based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer's books and records kept in the normal course of business;

2. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions and year to year; and

3. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the department upon request.

(b) This administrative regulation provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

(c) A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with this administrative regulation, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one (1) taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(3) Rules of reasonable approximation.

(a) In general, this administrative regulation establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state. The administrative regulation also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation prescribed in this administrative regulation. In other cases, the applicable rule in this administrative regulation permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in this administrative regulation.

(b) Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth in subsections (7), (8), (9), and (10) of this section, a taxpayer can ascertain the state

or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services.

(c) Related-member transactions - Information Imputed from Customer to Taxpayer. Where a taxpayer has receipts subject to this administrative regulation from transactions with a related-member customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(4) Rules with respect to exclusion of receipts from the receipts factor.

(a) The receipts factor only includes those amounts defined as receipts under KRS 141.120(1)(e).

(b) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to KRS 141.120(11)(a)(4)(b)iii.

(c) In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

(d) In a case in which a taxpayer can ascertain the state or states to which receipts from a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation, but the taxpayer is not taxable in one (1) or more of those states, the receipts that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

(e) Receipts of a taxpayer from hedging transactions, or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded pursuant to KRS 141.120(1)(e).

(f) Nothing in the provisions adopted here pursuant to KRS 141.120 is intended to limit the application of KRS 141.120(12) or the authority granted to the department under KRS 141.120(12).

(5) Sale, rental, lease or license of real property. In the case of a sale, rental, lease, or license of real property, the receipts from the sale are in this state if and to the extent that the property is in this state.

(6) Rental, lease, or license of tangible personal property. In the case of a rental, lease, or license of tangible personal property, the receipts from the sale are in this state if and to the extent that the property is in this state. If property is mobile property that is located both within and without this state during the period of the lease or other contract, the receipts assigned to this state are the receipts from the contract period multiplied by the fraction computed under 103 KAR 16:290. (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

(7) Sale of a service.

(a) General rule. The receipts from a sale of a service are in this state if and to the extent that the service is delivered to a location in this state. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth in subsections (7), (8), (9), and (10) of this section.

(b) In-person services.

1. In general, except as otherwise provided in this paragraph, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real

or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services may include:

- a. Warranty and repair services;
- b. Cleaning services;
- c. Plumbing services;
- d. Carpentry;
- e. Construction contractor services;
- f. Pest control;
- g. Landscape services;
- h. Medical and dental services,
- i. Including medical testing,
- j. X-rays and mental health care and treatment;
- k. Child care;
- l. Hair cutting and salon services;
- m. Live entertainment and athletic performances; and
- n. In-person training or lessons.

In-person services include services described in 1.a.-n. above that are performed:

- a. At a location that is owned or operated by the service provider; or
  - b. A location of the customer, including the location of the customer's real or tangible personal property.
- Various professional services, including, but not limited to, accounting, financial and consulting services, and other similar services are not treated as in-person services within the meaning of this subparagraph, although they may involve some amount of in-person contact.

## 2. Assignment of receipts.

a. Rule of determination. Except as otherwise provided in this subparagraph, if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in this state if and to the extent the customer receives the in-person service in this state. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:

a. If the service is performed with respect to the body of an individual customer in this state (e.g., hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g., live entertainment or athletic performances), the service is received in this state.

b. If the service is performed with respect to the customer's real estate in this state or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in this state, the service is received in this state.

c. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside this state, the service is received in this state if the property is shipped or delivered to the customer in this state.

3. Rule of reasonable approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the receipts are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

4. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement that the receipts from the sale or sales be eliminated from the denominator of the taxpayer's receipts factor. Note that for purposes of the examples, it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent

contractor acting on the taxpayer's behalf.

Example (i). Salon Corp has retail locations in Kentucky and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's in-state locations are in Kentucky. The receipts from sales of services provided at Salon Corp's locations outside Kentucky, even when provided to residents of Kentucky, are not receipts from in-state sales.

Example (ii). Landscape Corp provides landscaping and gardening services in Kentucky and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside Kentucky at the time the services are performed. The receipts from sale of services provided at the in-state location are in Kentucky.

Example (iii). Same facts as in Example (ii), except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in Kentucky and in other states. The receipts from the sale of services provided to Retail Corp are in Kentucky to the extent the services are provided in Kentucky.

Example (iv). Camera Corp provides camera repair services at a Kentucky retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its in-state location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's Kentucky location. The receipts from sale of these services are in Kentucky.

Example (v). Same facts as in Example (iv), except that a customer located in Kentucky mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in Kentucky by mail. The receipts from sale of the service are in Kentucky.

Example (vi). Teaching Corp provides seminars in Kentucky to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state, the teachers who teach the seminars include teachers that are resident outside the state, and the students who attend the seminars include students that are resident outside the state. Because the seminars are taught in Kentucky the receipts from sales of the services are in Kentucky.

(8) Services delivered to the customer, or on behalf of the customer, or delivered electronically through the customer.

(a) In general, if the service provided by the taxpayer is not an in-person service within the meaning of subsection (7)(b) of this section, or a professional service within the meaning of subsection (10) of this section, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in this state if and to the extent that the service is delivered in this state. For purposes of subsections (8) and (9) of this section, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one (1) or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience. A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(b) Assignment of receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this subsection, a service delivered by an electronic transmission

is not a delivery by a physical means). If a rule of assignment set forth in this administrative regulation, depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to that state are excluded from the denominator of the taxpayer's receipts factor.

1. Delivery to or on behalf of a customer by physical means whether to an individual or business customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example:

a. Product delivery services where property is delivered to the customer or to a third party on behalf of the customer;

b. The delivery of brochures, fliers or other direct mail services;

c. The delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and

d. The sale of custom software where the taxpayer installs the custom software at the customer's site (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation.) The rules in this administrative regulation apply whether the taxpayer's customer is an individual customer or a business customer.

e. Rule of determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.

f. Rule of reasonable approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

g. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement in these examples that the receipts must be eliminated from the denominator of the taxpayer's receipts factor.

Example (i). Direct Mail Corp, a corporation based outside Kentucky, provides direct mail services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in Kentucky and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp are assigned to Kentucky to the extent that the services are delivered on behalf of Business Corp to Kentucky customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in Kentucky).

Example (ii). Ad Corp is a corporation based outside Kentucky that provides advertising and advertising-related services in Kentucky and in neighboring states. Ad Corp enters into a contract at a location outside Kentucky with an individual customer who is not a Kentucky resident to design advertisements for billboards to be displayed in Kentucky, and to design fliers to be mailed to Kentucky residents. All of the design work is performed outside Kentucky. The receipts from the sale of the design services are in Kentucky because the service is physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

Example (iii). Same facts as Example (ii), except that the contract is with a business customer that is based outside Kentucky. The receipts from the sale of the design services are in Kentucky because the services are physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

Example (iv). Fulfillment Corp, a corporation based outside Kentucky, provides product delivery fulfillment services in Kentucky and in neighboring states to Sales Corp, a corporation located outside Kentucky that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in Kentucky, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside Kentucky. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp are assigned to Kentucky to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in Kentucky.

Example (v). Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in Kentucky, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside Kentucky, and then physically installs the software on Buyer Corp's computer hardware located in Kentucky. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale are assigned to Kentucky because the software is physically delivered to the customer in Kentucky.

Example (vi). Same facts as Example (v), except that Buyer Corp has offices in Kentucky and several other states, but is commercially domiciled outside Kentucky and orders the software from a location outside Kentucky. The receipts from the development and sale of the custom software service are assigned to Kentucky because the software is physically delivered to the customer in Kentucky.

(9) Delivery to a customer by electronic transmission. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply:

(a) Services delivered by electronic transmission to an Individual Customer.

1.a. Rule of determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.

b. Rules of reasonable approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

2. Services delivered by electronic transmission to a business customer.

a. Rule of determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this subsection 9(b)(2) of this section it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.

b. Rule of reasonable approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably

approximate the state or states.

c. Secondary rule of reasonable approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this administrative regulation. In these cases, unless the taxpayer can apply the safe harbor set forth in this subsection the taxpayer shall reasonably approximate the state or states in which the service is received as follows:

i. By assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer;

ii. If the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and

iii. If the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than five (5) percent of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

d. Safe harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at subsection (9)(b)2.c. of this section, apply the safe harbor stated in this subsection. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and (2) does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer, and not otherwise.

e. Related member transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related member, the taxpayer may not use the secondary rule of reasonable approximation in subparagraph iii of this section but may use the rule of reasonable approximation and the safe harbor provided that the department may aggregate sales to related members in determining whether the sales exceed five (5) percent of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

f. Examples. In these examples, unless otherwise stated, assume that the taxpayer is not related to the customer to which the service is delivered. Also, unless otherwise stated, assume that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement in these examples that the receipts must be eliminated from the denominator of the taxpayer's receipts factor. Further, assume if relevant, unless otherwise stated, that the safe harbor set forth in subparagraph d. above does not apply.

Example (i). Support Corp, a corporation that is based outside Kentucky, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in Kentucky and other states. Support Corp supplies its services on a case-by-case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers are in Kentucky to the extent that Support Corp's services are received in Kentucky.

Example (ii). Online Corp, a corporation based outside Kentucky, provides Web-based services through the means of the

Internet to individual customers who are residents in Kentucky and in other states. These customers access Online Corp's Web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp can either determine the state or states where the services are received, or, where it cannot determine the state or states, it has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to Kentucky the receipts from sales for which it does not know the customers' locations in the same proportion as those receipts for which it has this information.

Example (iii). Same facts as in Example (ii), except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its Web-based services do not generally track the sales for which it does have this information. Online Corp must assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses.

Example (iv). Same facts as in Example (iii), except that Online Corp is not taxable in one (1) state to which some of its receipts from sales would be otherwise assigned. The receipts that would be otherwise assigned to that state are excluded from the denominator of Online Corp's receipts factor.

Example (v). Net Corp, a corporation based outside Kentucky, provides web-based services to a business customer, Business Corp, a company with offices in Kentucky and two (2) neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in Kentucky were responsible for seventy-five (75) percent of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for twenty-five (25) percent of Business Corp's use of Net Corp's services. In this case, seventy-five (75) percent of the receipts from the sale are received in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from sales to Business Corp, Net Corp must assign the receipts under the secondary rule of approximation to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (vi). Net Corp, a corporation based outside Kentucky, provides Web-based services through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. Assume that for each customer Net Corp cannot determine the state or states where its Web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Also assume that Net Corp does not derive more than five (5) percent of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor, and may assign its receipts using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts would be otherwise assigned, it must exclude those receipts from the denominator of its receipts factor.

(b) Services delivered electronically through or "on behalf of"

an individual or business customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one (1) or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

1. Rule of determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in this state if and to the extent that the end users or other third-party recipients are in this state. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in this state to the extent that the audience for the advertising is in this state. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in this state to the extent that the end users or other third-party recipients receive the services in this state. These rules [in this subsection] apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

2. Rule of reasonable approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.

3. Select secondary rules of reasonable approximation.

a. If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

b. If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients; or if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location; the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.

c. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in this state and must apportion its income pursuant to KRS 141.120.

Example: Web Corp, a corporation that is based outside Kentucky, provides Internet content to viewers in Kentucky and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp

receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its Website. Web Corp's sale of advertising space to its business customers is assigned to Kentucky to the extent that the viewers of the Internet content are in Kentucky, as measured by viewings or clicks. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate such location, Web Corp must approximate the amount of its Kentucky sales by multiplying the amount of such sales by a percentage that reflects the Kentucky population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in such area.

Example (ii). Retail Corp, a corporation that is based outside of Kentucky, sells tangible property through its retail stores located in Kentucky and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and must assign the proceeds from this service to the state or states from which the phone calls are placed by such customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate such locations, Answer Co must approximate the amount of its Kentucky sales by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Kentucky population in the specific geographic area from which the calls are placed relative to the total population in such area.

Example (iii). Web Corp, a corporation that is based outside of Kentucky, sells tangible property to customers via its Internet Website. Design Co designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co's services are delivered to Web Corp, the proceeds from which are assigned pursuant to Section 5(9) of this administrative regulation. The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

Example (iv). Wholesale Corp, a corporation that is based outside Kentucky, develops an Internet-based information database outside Kentucky and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both. Assume that on the particular facts applicable in this example, Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate such location, Wholesale Corp must approximate the extent to which its services are received by end users in Kentucky by using a percentage that reflects the ratio of the Kentucky population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in such area. Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access

constitutes a service or a license of intangible property, or some combination of both.

(10) Professional services.

(a) Except as otherwise provided in this subsection, professional services are services that require specialized knowledge, and in some cases, require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation:

1. Management services;
2. Bank and financial services;
3. Financial custodial services;
4. Investment and brokerage services;
5. Fiduciary services;
6. Tax preparation;
7. Payroll and accounting services;
8. Lending services;
9. Credit card services (including credit card processing

services);

10. Data processing services;
11. Legal services;
12. Consulting services;
13. Video production services;
14. Graphic and other design services;
15. Engineering services; and
16. Architectural services.

(b) Overlap with other categories of services.

1. Certain services that fall within the definition of "professional services" set forth in this subsection are nevertheless treated as "in-person services", and are assigned under the rules of that subsection (7)(b) of this section. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services." However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under the rules of this subsection, notwithstanding the fact that these services may involve some amount of in-person contact.

2. Professional services may in some cases include the transmission of one (1) or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in this subsection and not those set forth in subsection (8) of this section pertaining to services delivered to a customer or through or on behalf of a customer.

(c) Assignment of receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one (1) of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services. In any instance in which the taxpayer is not taxable in the state to which receipts from a sale is assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor.

1. General rule. Receipts from sales of professional services are assigned in accordance with Section 5 of this administrative regulation, other than those services described in:

- a. Subsection (10)(c)2. of this section. (architectural and engineering services);
- b. Subsection (10)(c)3. of this section. (services provided by a financial institution); and
- c. Subsection (10)(c)4. of this section. (transactions with related members)

d. Professional services delivered to individual customers. Except as otherwise provided in this subsection, in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this subsection. In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.

e. Professional services delivered to business customers. Except as otherwise provided in this subsection, in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth in subsection (10)(f) of this section, the taxpayer shall assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

f. Safe harbor: large volume of transactions. Notwithstanding the rules set forth in paragraphs (d) and (e) of this subsection, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, and does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of subsection (10)(d) of this section, and not otherwise.

2. Architectural and engineering services with respect to real or tangible personal property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of subsection (10) of this section. However, unlike in the case of the general rule that applies to professional services,

a. The receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and

b. The receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in subsection (10)(d)2. of this section, the receipts from a sale of these services must be assigned under the general rule for professional services.

3. Services provided by financial organizations and institutions. The apportionment rules that apply to "financial organizations," as



defined by KRS 141.120(1)(c), are set forth in KRS 141.121(5) and this administrative regulation. In any instance in which a financial institution performs services that are to be assigned pursuant to KRS 141.121(5) and this administrative regulation, including, for example, financial custodial services, those services are considered professional services within the meaning of subsection (10) of this section, and are assigned according to the general rule for professional service transactions as set forth in subsection (10)(c)1. of this section. Note that "financial institutions," as defined by KRS 136.500(10), are subject to the franchise tax imposed by KRS 136.505 and related statutes and administrative regulations under KRS Chapter 136 and are exempt from the corporation income tax per KRS 141.040(1)(a) and the limited liability entity tax per KRS 141.0401(6)(a).

4. Related member transactions. In any instance in which the professional service is sold to a related member, rather than applying the rule for professional services delivered to business customers in subsection (10)(e) of this section, the state or states to which the service is assigned is the place of receipt by the related member as reasonably approximated using the following hierarchy: (1) if the service primarily relates to specific operations or activities of a related member conducted in one (1) or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related member's payroll at the locations to which the service relates in the state or states; or (2) if the service does not relate primarily to operations or activities of a related member conducted in particular locations, but instead relates to the operations of the related member generally, then to the state or states in which the related member has employees, in proportion to the related member's payroll in those states. The taxpayer may use the safe harbor provided by this administrative regulation provided that the department may aggregate the receipts from sales to related members in applying the five (5) percent rule if necessary or appropriate to avoid distortion.

5. Broadcast advertising services. Notwithstanding anything herein to the contrary, receipts from a broadcaster's sale of advertising services to a broadcast customer are assigned to this state if the commercial domicile of the broadcast customer is in this state. For purposes of this provision, "advertising services" means an agreement to include the broadcast customer's advertising content in the broadcaster's film programming.

6. Examples. Unless otherwise stated, assume in each of these examples, where relevant, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement in the examples that the receipts must be excluded from the denominator of the taxpayer's receipts factor. Assume also that the customer is not a related member and that the safe harbor does not apply.

Example (i). Broker Corp provides securities brokerage services to individual customers who are resident in Kentucky and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and where it does not know this state of primary residence, it knows the customer's billing address. Also, assume that Broker Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual customer. If Broker Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state.

Example (ii). Same facts as in Example (i), except that Broker Corp has several individual customers from whom it derives, in each instance, more than five (5) percent of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives five (5) percent or less of its receipts from sales of all services must be assigned as described in Example (i). For each customer from whom it derives more than five (5) percent of its receipts from sales of all services, Broker Corp is required to determine the customer's state of primary residence and must assign the receipts from the services provided to that customer to that state. In any case in which a five (5) percent customer's state of primary residence is Kentucky, receipts from a sale made to that

customer must be assigned to Kentucky; in any case in which a five (5) percent customer's state of primary residence is not Kentucky receipts from a sale made to that customer are not assigned to Kentucky. Where receipts from a sale are assigned to a state other than Kentucky, if the state of assignment (i.e., the state of primary residence of the individual customer) is a state in which Broker Corp is not taxable, receipts from the sales must be excluded from the denominator of Broker Corp's receipts factor.

Example (iii). Architecture Corp provides building design services as to buildings located, or expected to be located, in Kentucky to individual customers who are resident in Kentucky and other states, and to business customers that are based in Kentucky and other states. The receipts from Architecture Corp's sales are assigned to Kentucky because the locations of the buildings to which its design services relate are in Kentucky, or are expected to be in Kentucky. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts are assigned to Kentucky even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Kentucky or are electronically delivered to its customer in a state other than Kentucky.

Example (iv). Law Corp provides legal services to individual clients who are residents in Kentucky and in other states. In some cases, Law Corp may prepare one (1) or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know this state of primary residence, it knows the client's billing address. Also, assume that Law Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual client. If Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the receipts to that state. For purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state.

Example (v). Same facts as in Example (iv), except that Law Corp provides legal services to several individual clients who it knows have a primary residence in a state where Law Corp is not taxable. Receipts from these services are excluded from the denominator of Law Corp's receipts factor even if the billing address of one (1) or more of these clients is in a state in which Law Corp is taxable, including Kentucky.

Example (vi). Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one (1) case, the agreement is principally managed in Kentucky; in the other cases, the agreement is principally managed in a state other than Kentucky. If the agreement for legal services is principally managed by the client in Kentucky the receipts from sale of the services are assigned to Kentucky; in the other cases, the receipts are not assigned to Kentucky. In the case of receipts that are assigned to Kentucky, the receipts are so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state.

Example (vii). Same facts as in Example (vi), except that Law Corp is not taxable in one (1) of the states other than Kentucky in which Law Corp's agreement for legal services that governs the client relationship is principally managed by the business client. Receipts from these latter services are excluded from the denominator of Law Corp's receipts factor.

Example (viii). Consulting Corp, a company that provides

consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in Kentucky, the receipts from the sale of Consulting Corp's services are assigned to Kentucky. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly.

Example (ix). Bank Corp provides financial custodial services, including the safekeeping of some of its customers' financial assets, to 100 individual customers who are resident in Kentucky and in other states. Assume for purposes of this example that Bank Corp knows the state of primary residence for many of its customers, and where it does not know the state of primary residence, it knows the customer's billing address. Also assume that Bank Corp does not derive more than five (5) percent of its receipts from sales of all of its services from any single customer. Note that because Bank Corp does not have more than 250 customers, it may not apply the safe harbor for professional services stated in Section 5(10) of this administrative regulation. If Bank Corp knows its customer's state of primary residence, it must assign the receipts to that state. If Bank Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it must assign the receipts to that state. Bank Corp's receipts are assigned to Kentucky if the customer's state of primary residence (or billing address, in cases where it does not know the customer's state of primary residence) is in Kentucky, even if Bank Corp's financial custodial work, including the safekeeping of the customer's financial assets, takes place in a state other than Kentucky.

Example (x). Same facts as Example (ix), except that Bank Corp has more than 250 customers, individual or business. Bank Corp may apply the safe harbor for professional services stated in Section 5(10)(f) of this administrative regulation, and may assign its receipts from sales to a state or states using each customer's billing address.

Example (xi). Same facts as Example (x), except that Bank Corp derives more than five (5) percent of its receipts from sales from a single individual customer. As to the sales made to this customer, Bank Corp is required to determine the individual customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state. Receipts from sales to all other customers are assigned as described in Example (x).

Example (xii). Advisor Corp, a corporation that provides investment advisory services, provides these advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are residents in numerous states, which may or may not include Kentucky. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Kentucky, receipts from the sale of Advisor Corp's services are assigned to Kentucky. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states.

Example (xiii). Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in Kentucky, receipts from the sale of Advisor Corp's services are assigned to Kentucky. Note that it is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.

Example (xiv). Design Corp is a corporation based outside Kentucky that provides graphic design and similar services in Kentucky and in neighboring states. Design Corp enters into a

contract at a location outside Kentucky with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than five (5) percent of its receipts from sales of services from the individual customer. All of the design work is performed outside Kentucky. Receipts from the sales are in Kentucky if the customer's billing address is in Kentucky.

(11) License or lease of intangible property.

(a)1. The receipts from the license of intangible property are in this state if and to the extent the intangible is used in this state. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions are set forth in subsection (11)(b)-(f) of this section. For purposes of the rules set forth in this subsection, a lease of intangible property is to be treated the same as a license of intangible property.

2. In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of this administrative regulation. Note, however, that for purposes of subsection (11) and (12) of this section, a sale or exchange of intangible property is treated as a license of that property where the receipts from the sale or exchange derived from payments that are contingent on the productivity, use or disposition of the property.

3. Intangible property licensed as part of the sale or lease of tangible property is treated under Section 5 of this administrative regulation as the sale or lease of tangible property.

4. In any instance in which the taxpayer is not taxable in the state to which the receipts from the license of intangible property are assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor.

5. Nothing in this administrative regulation shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "receipts" pursuant to KRS 141.120(1)(e), or that are excluded from the numerator and the denominator of the receipts factor pursuant to KRS 141.120(11)(a)(4)(b)iii. So, to the extent that the transfer of either a security or business "goodwill" or similar intangible value, including, without limitation, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and the denominator of the taxpayer's receipts factor.

(b) License of a marketing intangible. Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to this state to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in this state. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances, the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to this state, it shall assign that amount or proportion to this state. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from consumers in this state, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at

wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing those marketing intangible will be presumed to be derived from within the United States.

(c) License of a production intangible. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right are assigned to this state to the extent that the use for which the fees are paid takes place in this state. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a member other than a related member where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). If the department can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in this state, it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside this state. In the case of a license of a production intangible to a related member, the taxpayer must assign the receipts to where the intangible property is actually used.

(d) License of a broadcasting intangible. Where a broadcaster grants a license to a broadcast customer for the right to use film programming, the licensing fees paid by the licensee for such right are assigned to this state to the extent that the broadcast customer is located in this state. In the case of business customers, the broadcast customer's location shall be determined using the broadcast customer's commercial domicile. In the case of individual customers, the broadcast customer's location shall be determined using the address of the broadcast customer listed in the broadcaster's records.

(e) License of a mixed intangible. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the department will accept that separate statement for purposes of this administrative regulation. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the department can reasonably establish otherwise.

(f) License of intangible property where substance of transaction resembles a sale of goods or services.

1. In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the rules set forth in subsection (9)(a) and (b) of this section, as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this subsection include, without limitation, the license of database access, the license of access to information, the license of digital goods and the license of certain software (e.g., where the

transaction is not the license of pre-written software that is treated as the sale of tangible personal property).

2. Sublicenses. Pursuant to subsection (11)(f) of this section, the rules of subsection (9)(b) may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth in subsection (9)(b) that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

3. Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable in each state to which its receipts would be assigned so that there is no requirement in these examples that the receipts must be eliminated from the denominator of the taxpayer's receipts factor. Also assume that the customer is not a related member.

Example (i). Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the products at multiple store locations, including store locations that are both within and without Kentucky. Further, the licensing fees that are paid by Dealer Co are broken out on a per-store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The portion of the fees to be assigned to Kentucky are determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its Kentucky stores relative to Dealer Co's total receipts.

Example (ii). Network Corp is a broadcaster that licenses rights to its film programming to both platform distribution companies and individual customers. Platform distribution companies pay licensing fees to Network Corp for the rights to distribute Network Corp's film programming to the platform distribution companies' customers. Network Corp's individual customers pay access fees to Network Corp for the right to directly access and view Network Corp's film programming. Network Corp's receipts from each platform distribution company will be assigned to Kentucky if the broadcast customer's commercial domicile is in Kentucky. Network Corp's receipts from each individual broadcast customer will be assigned to Kentucky if the address of the broadcast customer listed in the broadcaster's records is in Kentucky.

Example (iii). Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question will be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Kentucky receipts of Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Kentucky population in the specific geographic region relative to the total population in that region. If Moniker Corp is able

to reasonably establish that the marketing intangible was materially used throughout a foreign country, then the population of that country will be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city; then none of the foreign country's population beyond the population of the major city is include in the population ratio calculation. If Moniker Corp is not taxable in any state (including a foreign country) in which Wholesale Co's ultimate consumers are located, the receipts that would be assigned to that state are excluded from the denominator of Moniker Corp's receipts factor.

Example (iv). Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify any other fees. The appliances are both manufactured and sold in Kentucky and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the department can reasonably establish that the actual use of the intangible property takes place in part in Kentucky, the royalty is assigned based to the location of that use rather than to location of the licensee's commercial domicile. It is presumed that the entire use is in Kentucky except to the extent that the taxpayer can demonstrate that the actual location of some or all of the use takes place outside Kentucky. Assuming that Formula, Inc can demonstrate the percentage of manufacturing that takes place in Kentucky using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will constitute Formula, Inc's Kentucky receipts.

Example (v). Axel Corp enters into a license agreement with Biker Co in which Biker Co is granted the right to produce motor scooters using patented technology owned by Axel Corp, and also to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside Kentucky. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co.'s receipts that are derived from Kentucky customers. Also assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the Kentucky population constitutes twenty-five (25) percent of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the department reasonably establishes otherwise. Assuming that neither member establishes otherwise, twenty-five (25) percent of the licensing fee constitutes Kentucky receipts.

Example (vi). Same facts as Example (v), except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract constitutes both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the department will: (1) Assign no part of the licensing fee paid for the production intangible to Kentucky, and (2) Assign twenty-five (25) percent of the licensing fee paid for the marketing intangible to Kentucky.

Example (vii). Better Burger Corp, which is based outside Kentucky, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in

Kentucky. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better Burger name and service marks, food processes and cooking know-how, as well as fees for management services. The upfront fees for the receipt of the Kentucky franchises constitute fees paid for the licensing of a marketing intangible. These fees constitute Kentucky receipts because the franchisees are for the right to make Kentucky sales. The monthly franchise fees paid by Kentucky franchisees constitute fees paid for (1) the license of marketing intangibles (the Better Burger name and service marks), (2) the license of production intangibles (food processes and know-how), and (3) personal services (management fees). The fees paid for the license of the marketing intangibles and the production intangibles constitute Kentucky receipts because in each case the use of the intangibles is to take place in Kentucky. The fees paid for the personal services are to be assigned pursuant to this section.

Example (viii). Online Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to individual customers that are resident in Kentucky and in other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with subsection (11)(f) of this section. If Online Corp can determine or reasonably approximate the state or states where its database is accessed, it must do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp must assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. In this case, Online Corp's receipts from sales made to its individual customers are in Kentucky in any case in which the customer's billing address is in Kentucky.

Example (ix). Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in Kentucky and two (2) neighboring states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with subsection (11)(f) of this section. Assume that Net Corp cannot determine where its database is accessed but reasonably approximates that seventy-five (75) percent of Business Corp's database access took place in Kentucky, and twenty-five (25) percent of Business Corp's database access took place in other states. In that case, seventy-five (75) percent of the receipts from database access is in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from database access from Business Corp, Net Corp must assign the receipts under Section 5(9)(b) of this administrative regulation to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from database access from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (x). Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. The license is a license of intangible property that resembles a sale of goods or services and receipts from that license are assigned in accordance with Section 5(11)(f) of this administrative regulation. Assume that Net Corp cannot determine or reasonably approximate the location where its information

database is accessed. Also assume that Net Corp does not derive more than five (5) percent of its receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in Section 5(9)(a)2.d. of this administrative regulation, and may assign its receipts to a state or states using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts would be otherwise assigned, it must exclude those receipts from the denominator of its receipts factor.

Example (xi). Web Corp, a corporation based outside of Kentucky, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are resident in Kentucky and in other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and are assigned by applying the rules set forth in Section 5(9)(b) of this administrative regulation. If Web Corp can determine or reasonably approximate the state or states where its database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient information from which it can determine or reasonably approximate the location where its database is accessed by end users, Web Corp must approximate the extent to which its database is accessed in Kentucky using a percentage that represents the ratio of the Kentucky population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area.

(12) Sale of intangible property.

(a) Assignment of receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this subsection, a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of the property, see KRS 141.120(11)(a)(4)(b)iii.

1. Contract right or government license that authorizes business activity in specific geographic area. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in Kentucky, the taxpayer shall assign the receipts from the sale to this state. If the intangible property is used or is authorized to be used in this state and one (1) or more other states, the taxpayer shall assign the receipts from the sale to this state to the extent that the intangible property is used in or authorized for use in this state, through the means of a reasonable approximation.

2. Sale that resembles a license (receipts are contingent on productivity, use or disposition of the intangible property). In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in subsection (11) of this section (pertaining to the license or lease of intangible property).

3. Sale that resembles a sale of goods and services. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive

from payments contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in subsection (11)(f) of this section (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in subsection (11)(f)3. of this section.

4. Excluded receipts. Receipts from the sale of intangible property are not included in the receipts factor in any case in which the sale does not give rise to receipts within the meaning of KRS 141.120(1)(e). In addition, pursuant to KRS 141.120(11)(a)(4)(b)iii receipts from the sale of intangible property are excluded from the numerator and the denominator of the taxpayer's receipts factor if the receipts are not referenced in KRS 141.120(11)(a)(4)(b)i or KRS 141.120(11)(a)(4)(b)ii. The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's receipts factor under KRS 141.120(11)(a)(4)(b)iii includes, without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value. Also, in any instance in which, the state to which the receipts from a sale is to be assigned can be determined or reasonably approximated, but where the taxpayer is not taxable in such state, the receipts that would otherwise be assigned to such state shall be excluded from the denominator of the taxpayer's receipts factor.

5. Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable in each state to which some of its receipts would be assigned, so that there is no requirement in these examples that the receipts to other states must be excluded from the taxpayer's denominator pursuant to subsection (11)(a) of this section and KRS 141.120(11)(c).

Example (i). Airline Corp, a corporation based outside Kentucky, sells its rights to use several gates at an airport located in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale are in Kentucky because the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in Kentucky.

Example (ii). Wireless Corp, a corporation based outside Kentucky, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale are in Kentucky because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in Kentucky.

Example (iii). Same facts as in Example (ii) except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in Kentucky and an adjacent state. Wireless Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two (2) states covered by the license.

Example (iv). Same facts as in Example (iii) except that Wireless Corp is not taxable in the adjacent state in which the FCC license authorizes it to operate wireless telecommunications services. The receipts paid to Wireless Corp that would be assigned to the adjacent state must be excluded from the denominator of Wireless Corp's receipts factor.

Example (v). Sports League Corp, a corporation that is based outside Kentucky, sells the rights to broadcast the sporting events played by the teams in its league in all fifty (50) U.S. states to Network Corp. Although the games played by Sports League Corp will be broadcast in all fifty (50) states, the games are of greater interest in the southeast region of the country, including Kentucky. Because the intangible property sold is a contract right that authorizes the holder to conduct a business activity in a specified geographic area, Sports League Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this

reasonable approximation, Sports League Corp may rely upon audience measurement information that identifies the percentage of the audience for its sporting events in Kentucky and the other states.

Example (vi). Same facts as in Example (v), except that Sports League Corp is not taxable in one (1) state. The receipts paid to Sports League Corp that would be assigned to that state must be excluded from the denominator of Sports League Corp's receipts factor.

Example (vii). Inventor Corp, a corporation that is based outside Kentucky, sells patented technology that it has developed to Buyer Corp, a business customer that is based in Kentucky. Assume that the sale is not one in which the receipts derive from payments that are contingent on the productivity, use, or disposition of the property. Inventor Corp understands that Buyer Corp is likely to use the patented technology in Kentucky, but the patented technology can be used anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity in a specific geographic area). The receipts from the sale of the patented technology are excluded from the numerator and denominator of Inventor Corp's receipts factor.

(13) Special rules.

(a) Software transactions. A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in this state as determined under the rules for the sale of tangible personal property set forth under KRS 141.120(10) and related administrative regulations. In all other cases, the receipts from a license or sale of software are to be assigned to this state as determined otherwise under this administrative regulation. (e.g., depending on the facts, as the development and sale of custom software, see subsection (8) of this section, as a license of a marketing intangible, see subsection (11)(b) of this section, as a license of a production intangible, see subsection (11)(c) of this section, as a license of intangible property where the substance of the transaction resembles a sale of goods or services, see subsection (11)(f) of this section, or as a sale of intangible property, see subsection (12) of this section.

(b) Sales or licenses of digital goods or services.

1. In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio, and software products, or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in subsection (9)(a) and (b) or subsection 10(c)(5) of this section, as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service.

2. Providers of communication services, cable service, and Internet access. Providers, as defined by KRS 141.121(1)(e), shall apportion income to this state using a three (3) factor formula as provided in KRS 141.901 pursuant to KRS 141.121(3).

Section 6. Special Rules: Receipts Factor. The following special rules are established in respect to the receipts factor of the apportionment formula:

(1) Bargeline. Bargelines shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated for the taxable year. Miles operated in this state shall be fifty (50) percent of the miles operated on the Ohio River, the Big Sandy River, and the Mississippi River adjacent to this state's shoreline plus all miles operated on other inland waterways within this state. A "mile operated" shall mean the movement of a barge, tug, or other watercraft one (1) mile.

(2) Busline. Buslines shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated for the taxable year.

(3) Passenger airline. Pursuant to KRS 141.121(2)(b)(1), passenger airlines, as defined by KRS 141.121(1)(d), shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is Kentucky revenue passenger miles in this state and the denominator of which is total revenue passenger miles for the taxable year. The term "Kentucky revenue passenger mile" is defined by KRS 141.121(1)(c), and the term "revenue passenger mile" is defined by KRS 141.121(1)(g).

(4) Pipeline. Pipeline companies shall determine receipts in this state by multiplying total operating revenues by a fraction, the numerator of which is barrel miles transported in this state and the denominator of which is total barrel miles transported for the taxable year. The term "barrel mile" shall mean the transportation of one (1) barrel of liquid or gas one (1) mile.

(5) Public service company. Public service companies, as defined by KRS 141.0401(6)(i), shall allocate and apportion net income in accordance with KRS 141.121(5).

(6) Qualified air freight forwarder. Pursuant to KRS 141.121(2)(b)(2), qualified air freight forwarders, as defined by KRS 141.121(1)(f), shall determine receipts in this state by multiplying total freight forwarding revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated by the affiliated airline for the taxable year. The term "affiliated airline" is defined by KRS 141.121(1)(a).

(7) Railroad. Railroads shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is revenue car miles in this state and the denominator of which is total revenue car miles for the taxable year. The term "revenue car mile" shall mean the movement of a loaded railcar one (1) mile.

(8) Regulated investment company. Regulated investment companies shall apportion income pursuant to KRS 141.120 and this administrative regulation; provided, however, that a regulated investment company may elect an alternative method for determining receipts pursuant to KRS 141.121(4)(b).

(9) Securities brokerage services. Securities brokers operating within certain Kentucky Enterprises Zones defined by KRS 141.121(4)(c), shall apportion income pursuant to KRS 141.120 and this administrative regulation provided, however, that a securities broker so defined may elect an alternative method for determining receipts pursuant to KRS 141.121(4)(c).

(10) Truckline. Trucklines shall determine receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is miles operated in this state and the denominator of which is total miles operated for the taxable year. [Definition. (1) "Gross receipts" means the total amount of consideration, including cash, credit, property, and services, paid for the sale, lease, rental, or use of property.

Section 2. The following shall be examples of activities that result in the assignments of gross receipts to Kentucky and shall be included in the numerator described in KRS 141.120(8)(c), if the receipts are business income:

- (1) The sale, lease, rental, or other use of tangible personal property in this state;
- (2) The sale of real property located in Kentucky;
- (3) The lease, rental or other use of real property located in Kentucky;
- (4) The provision of services performed entirely in Kentucky during the tax period;
- (5) The provision of services performed within and without Kentucky during the tax period;
- (6) Intangible property received by a business with a commercial domicile in Kentucky;
- (7) Intangible property, if the intangible has acquired a Kentucky business situs;
- (8) Franchise fees received from a franchisee located in



Kentucky; and

(9) ~~The distributive share of net income received from a general partnership that is required to file a Kentucky income tax return under the provisions of KRS 141.206.~~

~~Section 3. Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property shall be assigned to Kentucky if the property is in Kentucky or is shipped or delivered to a purchaser in Kentucky.~~

~~(2) Sales of goods destined for delivery outside of Kentucky shall not be assigned to Kentucky, irrespective of method of shipment or delivery.~~

~~(3) Sales of tangible personal property to the U.S. Government shall be assigned to Kentucky if the property is shipped from Kentucky.~~

~~(4) Receipts from intangibles shall be assigned to Kentucky if the corporation's commercial domicile is in Kentucky or the intangible has acquired a Kentucky business situs. Examples of receipts from intangibles which are deemed to have acquired a Kentucky business situs shall be franchise fees from a franchisee located in Kentucky and a corporation's Kentucky distributive share of net income from a general partnership doing business in Kentucky.~~

~~(5) Rents or royalties from real or tangible personal property shall be assigned to Kentucky if the property is located in Kentucky or in the case of mobile property the rent is assigned to Kentucky, if the lessee's base of operations for the property is in Kentucky.~~

~~(6) Receipts from the performance of services shall be assigned to Kentucky if the services are performed entirely in Kentucky, or the services are performed both within and without Kentucky but a greater portion is performed in Kentucky than in any other state based on cost of performance.~~

~~(7) If the corporation has income from a general partnership, the distributive share income shall be included in the sales factor. The denominator shall include the total distributive share; the numerator shall include the amount of the distributive share apportioned to Kentucky pursuant to KRS 141.206(9).~~

~~Section 4.(1) Receipts from intangible property shall be assigned to Kentucky, regardless of the corporation's or general partnership's commercial domicile, if possession and control of the intangible personal property is localized in connection with a trade or business, creating business situs with Kentucky, so that substantial use or value attaches to the intangible property in Kentucky.~~

~~(2) In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:~~

~~(a) The use of the intangible property in the continuous course of the trade or business in Kentucky;~~

~~(b) The permanency of the location of the intangible property in Kentucky;~~

~~(c) The independent control and management of the intangible property in Kentucky;~~

~~(d) The possession and control of the intangible property in Kentucky by an independent local agent for the purpose of transacting a permanent business; and~~

~~(e) The establishment or use of the intangible property in Kentucky in a manner that attaches substantial use and value of the intangible property to the Kentucky trade or business.~~

~~Section 5. This administrative regulation shall apply to tax periods beginning on or after January 1, 2005.]~~

DANIEL BORK, Commissioner

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 14, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018, at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. 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: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 782-6081, fax (502) 564-3875, email [Todd.Renner@ky.gov](mailto:Todd.Renner@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Renner

(1) Provide a brief summary of:

(a) What this administrative regulation does: HB 487 implementing a significant change in the way corporations that delivered services to Kentucky are taxed. The Commonwealth moved from a "cost of performance" to a "market-based" standard for determining what services should be apportioned to the Commonwealth. LRC utilized a Multi-State Tax Commission (MTC) model regulation when drafting HB 487, and this administrative regulation uses the MTC model regulations as its foundation. This administrative regulation provides guidance to taxpayers to determine what services are considered sourced in Kentucky under the "market-based" sourcing rules for use in the single receipts factor apportionment calculations.

(b) The necessity of this administrative regulation: There are myriad different ways to determine how property and services are delivered to the market in Kentucky. This administrative regulation sets forth uniform methods for determining when property and services are sold, marketed, and delivered to customers in Kentucky. It also provides guidance for non-traditional industries for determining receipts in Kentucky based on market-related concepts (e.g., bargelines, railroads, etc.).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance for the significant changes HB 487 made to KRS 141.120(11) related to the marketing of services and other intangible property. The changes to statute require companies to apportion those receipts to Kentucky based on whether they are marketed in the Commonwealth. This administrative regulation expands guidance for determining what is "marketed."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidelines necessary to comply with the requirements of the statute.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c). (d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any multi-state corporation with apportionable income in Kentucky will be affected by this administrative regulation. There are approximately 200,000 corporate returns filed annually in the 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: Taxpayers are required to evaluate the nature of their receipts in the Commonwealth and may be required to change the apportionment of those receipts if they are marketed in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are not readily available. However, multi-state taxpayers currently comply with market-based receipts sourcing in many other states, so they are familiar with the concept and have systems in place to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers that perform services in Kentucky and generate receipts for those services outside Kentucky will benefit from the elimination of the "cost of performance" standard and the adoption of the "market-based" standard for sourcing those receipts.

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

(a) Initially: There are no new costs are associated with this administrative regulation. Current department staff and resources will be used to implement this administrative regulation.

(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: Currently budgeted department funding and staff will be utilized to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation. All taxpayers who fall under the provisions of this administrative regulation will be treated equally.

#### 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 Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.018, and 141.120.

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 will be no effect on expenditures and revenues for state and local government agencies as a result of the changes to this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: Not Applicable

#### GENERAL GOVERNMENT CABINET Kentucky Board of Cosmetology (Amendment)

#### 201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 317A.020, 317A.050, 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

- (1) A signed letter of explanation from the applicant;
- (2) A certified copy of the judgment and sentence from the issuing court; and
- (3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

#### Section 3. Reciprocal Licensing.

(1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:

- (a) 1,500 hours of curriculum for cosmetology;
- (b) 450 hours of curriculum for nail technology;
- (c) 750 hours of curriculum for esthetics; or
- (d) 750 hours of curriculum for instructors.

(2) An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

- (a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;
- (b) Current digital certification of the out of state license from the issuing state board;
- (c) Diploma or certified testing documents proving 12th grade equivalency education;
- (d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;
- (e) A copy of the applicant's government-issued photo identification; and
- (f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:

- (a) Documentation required by subsection (2)(a)-through (f) of this section; and
- (b) Payment of the applicable examination fees established in 201 KAR 12:260.

(4) Active duty military and family members shall apply for a reciprocal license by submitting:

- (a) All documents required by subsection 2(a) through (f) of this section;
- (b) The Military Transfer Application;
- (c) A copy of the sponsor's active-duty orders listing the applicant as sponsor or an accompanying family member; and
- (d) Payment of a twenty-five (25) dollar license fee.

(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification, and payment of the fee as set forth in 201 KAR 12:260. Certifications shall be transmitted digitally to the reciprocal state agency.

#### Section 4. Permits.

- (1) Any person who engages in the practice of threading,

makeup artistry, or lash extensions shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

(a) A copy of applicant's government-issued photo identification;

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application; and

(d) Proof of completion of board- approved national certification program, if applying for a lash extension permit.

#### Section 5. Examination Registration.

(1) Applicants shall register as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation for the requested cosmetologist examination date;

(b) A nail technician student shall register with the board at least forty-five (45) days prior to graduation for the requested nail technician examination date; and

(c) An esthetician student shall register with the board at least four (4) months prior to graduation for the requested esthetician examination date.

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260.

(3) All examination applicants shall submit a two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(4) Theory examination dates shall be valid for ninety (90) days from student notification.

(5) A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.

(6) An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a) Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.

(7) Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

#### Section 6. Examination Components.

(1) The examination shall consist of a theory test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician or shampoo and style practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

#### Section 7. Grading.

(1) A minimum passing grade of seventy (70) percent on the theory test and the practical demonstration shall be required for the cosmetologist, esthetician, and nail technician examinations

(2) A minimum passing grade of eighty (80) percent on the theory test and eighty-five (85) percent on the practical

demonstration shall be required for all instructor examinations.

(3) All passing exam scores shall be valid for six (6) months from completion.

Section 8. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, esthetic practices, or nail technology prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

#### Section 9. License Application.

(1) An applicant who passes the examination shall have ninety (90) days following the examination to apply for a license.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in 201 KAR 12:260 before a license may be issued.

(3) An applicant who fails to apply for a license within one (1) year of passing the examination shall retake the examination and pay the appropriate examination fee set forth in 201 KAR 12:260.

#### Section 10. Retaking Examinations.

(1) Any applicant who fails either the theory test or the practical demonstration may retake that portion of the examination upon submitting a new Application for Examination with a two (2) by two (2) inch passport photo of the applicant taken within the preceding six (6) months, and paying the examination fee required by 201 KAR 12:260.

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination. If the examinee does not receive a passing score then the individual shall take an eighty (80) hour supplemental course in theory studies at a school licensed by the board.

(b) Following the supplemental course, the examinee may attempt the test two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt. [If, after three (3) additional failed attempts, the examinee does not receive a passing score then the individual shall be required to take an eighty (80) hour brush-up course in theory studies at a school licensed by the board.]

(2) An applicant caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for the examination.

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application.

#### Section 11. Duplicate Licenses, Renewal, and Restoration.

(1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses and permits shall be:

(a) Renewed using the Renewal Application or by using the board's online portal;

(b) Include the required copy of a government-issued photo identification; and

(c) Include payment of the fee set forth 201 KAR 12:260.

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(3) To restore an expired license or permit, a Restoration Application shall be submitted to the board with payment of the restoration and license fees set forth in 201 KAR 12:260 and the following:

- (a) For an expired individual license or permit, a copy of a government-issued photo identification;
- (b) For an expired salon license or limited facility permit, a new Salon Application or Limited Facility Permit Application; or
- (c) For an expired school license, a new School Application.

### Section 12. Salon and Facility Applications.

(1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility Permit Application with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its license or permit.

(6) A change in the ownership, management, or location of a licensed salon or facility shall require a new Salon Application, Limited Facility Permit Application, or Manager Change Form and payment of the license or change fee as set forth in 201 KAR 12:260.

(7) Each salon shall maintain a board licensed manager properly licensed in the services the salon provides at all times.

(8) Salon and Limited Facility licenses shall be mailed to the Kentucky mailing address on the application.

### Section 13. School Licenses.

(1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

- (a) A proposed student contract listing all financial charges to enrolling students;
- (b) A proposed floor plan drawn to scale by a draftsman or architect; and
- (c) Proof of five (5) years of residency in the Commonwealth.

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator shall conduct an inspection.

(5)(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received-unless the board extends the time period for good cause. "Good cause" includes:

- 1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or
- 2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

- 1. The reason for the extension and the term of the request; and
- 2. Supportive documentation of the extension request.

(6) A license to operate a school shall be valid only for the location and person, firm, or corporate owner named on the

application. A school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The school license shall contain:

- (a) The name of the proposed school; and
- (b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Each licensed school shall maintain a board licensed instructor as school manager at all times.

### Section 14. Change in School Ownership or Management.

(1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

Section 15. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

Section 16. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed school shall not be enrolled as a student in the school.

Section 17. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 18. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Out of State Transfer Application", October[March] 2018;
- (b) "Military Transfer Application", October[March] 2018;
- (c) "Certification Request Form" October[March] 2018;
- (d) "Permit Application", October[March] 2018;
- (e) "Application for Examination", October[March] 2018;
- (f) "Out of State Application for Examination", October[March] 2018;
- (g) "Duplicate License Application", October[March] 2018;
- (h) "Renewal Application", October[March] 2018;
- (i) "Restoration Application", October[March] 2018;
- (j) "Salon Application", October [March] 2018;
- (k) "Limited Facility Permit Application", October[March] 2018;
- (l) "Manager Change Form", October[March] 2018;
- (m) "School Application", October[March] 2018; and
- (n) "Demonstration Permit Application", October[February] 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018, at 10:00 a.m., at Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend

the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, email [julie.campbell@ky.gov](mailto:julie.campbell@ky.gov); fax (502) 564-0481.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for all examinations, licenses, and permits provided by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This amendment is necessary to set out the procedures to apply for examinations, permits, and licenses issued by the board. The proposed amendment is necessary to comply with new requirements arising out of the passage of Senate Bill 106 during the 2018 regular session of the General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment details the necessary steps for persons to apply for examinations, permits, and licenses issued by the board as authorized by KRS 317A.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides a specific process for any interested person to apply for and receive a permit or license to practice cosmetology, esthetics, shampoo and style, or nail technology, and to open a licensed salon, facility, or school 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: This amendment modernizes the certification process by requiring digital certification for proof of passing score on a national exam or for an out of state license. The amendment further requires the board to transmit certifications digitally to reciprocal licensing agencies in other states. The amendment also adds "shampoo and style" licensing requirements pursuant to Senate Bill 106, passed during the 2018 regular session of the General Assembly. The amendment further clarifies license examination procedures and specifies that passing exam scores shall be valid for six (6) months.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to establish guidelines for new licenses due to legislative changes, to clarify acceptable methods for transmission of certifications, and to clarify examination procedures and score durations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the necessary steps to apply for a board examination, permit, and license as authorized by KRS 317A.050.

(d) How the amendment will assist in the effective administration of the statutes: Through one concise administrative regulation, this amendment will facilitate the public's ability to apply for and receive the necessary examination, permit, and license to practice or teach cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed cosmetology schools with growth potential in the industry arising from the implementation of the new "shampoo and style" license and improved processes for all other licenses.

(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 impose any new requirements on those entities identified in question (3) above. Rather, it will facilitate the steps necessary for those persons to apply to take a board examination and to obtain a permit or license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will simplify the process for applicants and licensees to apply for board examinations, permits, licenses, and renewals.

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

(a) Initially: Some expenditure will be necessary to implement new licenses brought about by the passage of Senate Bill 106. Those costs cannot be assessed until the number of applicants for these new licenses is known. It is anticipated that the fees collected for these new licenses will offset the additional expenditure necessary.

(b) On a continuing basis: While initial outlays will decrease following the first year of implementation, administering new permits and licenses will have some continuing cost. Funds necessary for the implementation of new permits and licenses brought about by Senate Bill 106 are expected to be offset by fees collected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is entirely self-funded through collecting fees for examinations, permits, and licenses. Funds necessary for the implementation and enforcement of this administrative regulation are derived from the fees collected for KBC services.

(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: Although this amendment pertains to examinations, permits, and licenses, whether the accompanying fees set forth in 201 KAR 12:260 will require modification is likely to depend on the number of applications received.

(8) State whether this administrative regulation established any fees or directly or indirectly increased any fees: This amendment implements requirements for new licenses and permits and does not establish any associated fees. All fees for existing and new licenses and permits issued by the KBC are set out in 201 KAR 12:260, which is being concurrently amended to account for the new "shampoo and style" licenses.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all applicants, permittees, and licensees.

## 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? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060.

(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? Some new permits and licenses established by this amendment are created because of recent legislative changes. The revenue to

be generated from these new licenses is presently unknown. It is anticipated that these new licenses will generate some additional revenue for the KBC in the first year, however, it is also anticipated that such revenue will be offset by the expenses of processing the new permits and licenses, and conducting necessary inspections.

(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? Some new permits and licenses established by this amendment are created because of recent legislative changes. The revenue to be generated from these licenses is presently unknown. It is anticipated that these new licenses will generate additional revenue in subsequent years, although the amount of additional revenue will be determined by the number of applicants and licenses. It is anticipated that the expenses of processing the licenses and inspections necessary for the newly permitted and licensed facilities will offset the additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? Costs associated with implementing and overseeing the new permits and licenses in this amendment are presently unknown. However, those anticipated costs are expected to be offset by the fees collected for the newly created permits and licenses.

(d) How much will it cost to administer this program for subsequent years? Once the number of applicants for the new licenses is established in the first year, the expected costs for subsequent years can be assessed. It is anticipated that the additional costs associated with implementing these and the fees collected will offset licenses.

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

Revenues (+/-): Increase.

Expenditures (+/-): Increase.

Other Explanation: At this time, it is unclear how many applicants will avail themselves of the new permit and license opportunities. The expected increase in revenue and expenditures associated with the new licenses contained in this amendment can be better assessed after the first year. To the extent the first year of issuing the new licenses pursuant to this amendment sets a quantifiable baseline, at that time the amount of annual revenue and expenditures from these new licenses can be better assessed.

# **GENERAL GOVERNMENT** **Kentucky Board of Cosmetology** **(Amendment)**

## **201 KAR 12:082. Education requirements and school administration.**

RELATES TO: KRS 317A.020, 317A.050, 317A.090

STATUTORY AUTHORITY: KRS 317A.060, 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h) requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetic practices, and nail technology KRS 317A.090 establishes licensing requirements for schools of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the subject areas identified in this section.

- (1) Basics:
  - (a) History and Career Opportunities;
  - (b) Life Skills;
  - (c) Professional Image; and
  - (d) Communications.
- (2) General Sciences:

- (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology;
  - (c) Skin Structure, Growth, and Nutrition;
  - (d) Skin Disorders and Diseases;
  - (e) Properties of the Hair and Scalp;
  - (f) Basic Chemistry; and
  - (g) Basics of Electricity.
  - (3) Hair Care:
    - (a) Principles of Hair Design;
    - (b) Scalp Care, Shampooing, and Conditioning;
    - (c) Hair Cutting;
    - (d) Hair Styling;
    - (e) Braiding and Braid Extensions;
    - (f) Wig and Hair Additions;
    - (g) Chemical Texture Services; and
    - (h) Hair Coloring.
  - (4) Skin Care:
    - (a) Hair Removal;
    - (b) Facials; and
    - (c) Facial Makeup.
  - (5) Nails:
    - (a) Manicuring;
    - (b) Pedicuring;
    - (c) Nail Tips and Wraps;
    - (d) Monomer Liquid and Polymer Powder Nail Enhancements;
- and
- (e) Light Cured Gels.
  - (6) Business Skills:
    - (a) Preparation for Licensure and Employment;
    - (b) On the Job Professionalism; and
    - (c) Salon Businesses.

Section 2. A school of cosmetology, esthetic practices, and nail technology shall teach the students about the various supplies and equipment used in the usual salon practices.

## Section 3. Instructional Hours.

(1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:

- (a) 375 lecture hours for science and theory;
- (b) 1,085 clinic and practice hours; and
- (c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.

(2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors. Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors.

(1) A training period for a student shall be no more than ten (10) ~~eight (8)~~ hours per day, forty (40) hours per week.

(2) A student shall be allowed thirty (30) minutes per eight (8) hour day or longer for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

## Section 5. Laws and Regulations.

(1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and 201 KAR Chapter 12.

(2) Schools of cosmetology, esthetic practices, and nail technology, shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction shall include the following:

- (1) Basics:
  - (a) History and Opportunities;
  - (b) Life Skills;



- (c) Professional Image; and
- (d) Communications.
- (2) General Sciences:
  - (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology;
  - (c) Skin Structure and Growth;
  - (d) Nail Structure and Growth;
  - (e) Nail Diseases and Disorders;
  - (f) Basics of Chemistry;
  - (g) Nail Product Chemistry; and
  - (h) Basics of Electricity.
- (3) Nail Care:
  - (a) Manicuring;
  - (b) Pedicuring;
  - (c) Electric Filing;
  - (d) Nail Tips and Wraps;
  - (e) Monomer Liquid and Polymer Powder Nail Enhancements;
  - (f) UV and LED Gels; and
  - (g) Creative Touch.
- (4) Business Skills:
  - (a) Seeking Employment;
  - (b) On the Job Professionalism; and
  - (c) Salon Businesses.

Section 7. Nail Technology Hours Required.

- (1) A nail technician student shall receive no less than 450 hours in clinical and theory class work with a minimum of:
  - (a) 150 lecture hours for science and theory;
  - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
  - (c) 275 clinic and practice hours.
- (2) A nail technician student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 8. Apprentice Instructor Curriculum. The course of instruction for an apprentice instructor shall include no less than 750 hours, 425 hours of which shall be in direct contact with students, in the following:

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;
- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

Section 10. Instructors Online Theory Course. An apprentice instructor may complete the required 300 hours of theory curriculum through an approved digital platform if enrolled and tracked by a licensed Kentucky school of cosmetology, esthetic practices, or nail technology.

Section 11[40]. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 12[44]. Schools may enroll persons for a special

supplemental[brush-up] course in any subject.

Section 13[42]. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section.

- (1) Basics:
  - (a) History and Career Opportunities;
  - (b) Professional Image; and
  - (c) Communication.
- (2) General Sciences:
  - (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology;
  - (c) Basics of Chemistry;
  - (d) Basics of Electricity; and
  - (e) Basics of Nutrition.
- (3) Skin Sciences:
  - (a) Physiology and Histology of the Skin;
  - (b) Disorders and Diseases of the Skin;
  - (c) Skin Analysis; and
  - (d) Skin Care Products: Chemistry, Ingredients, and Selection.
- (4) Esthetics:
  - (a) Treatment Room;
  - (b) Basic Facials;
  - (c) Facial Massage;
  - (d) Facial Machines;
  - (e) Hair Removal;
  - (f) Advanced Topics and Treatments; and
  - (g) Makeup.
- (5) Business Skills:
  - (a) Career Planning;
  - (b) The Skin Care Business; and
  - (c) Selling Products and Services.

Section 14[43]. Esthetician Hours Required.

- (1) An esthetician student shall receive no less than 750 hours in clinical and theory class work with a minimum of:
  - (a) 250 lecture hours for science and theory;
  - (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
  - (c) 465 clinic and practice hours.
- (2) An esthetician student shall have completed 115 hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115 hours.

Section 15. Shampoo and Style License Subject Areas. The regular courses of instruction for shampoo and style license students shall contain courses relating to the subject areas identified in this section.

- (1) Basics:
  - (a) History and Career Opportunities;
  - (b) Life Skills;
  - (c) Professional Image; and
  - (d) Communications.
- (2) General Sciences:
  - (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology of head, neck and scalp;
  - (c) Skin Disorders and Diseases of head, neck and scalp;
  - (d) Properties of the Hair and Scalp; and
  - (e) Basics of Electricity.
- (3) Hair Care:
  - (a) Principles of Hair Design;
  - (b) Scalp Care, Shampooing, and Conditioning;
  - (c) Hair Styling;
  - (d) Blow drying;
  - (e) Roller Placement;
  - (f) Finger waves/ pin curls;
  - (g) Thermal curling;
  - (h) Flat iron styling;
  - (i) Wig and Hair Additions; and
  - (j) Long hair styling.
- (6) Business Skills:
  - (a) Preparation for Licensure and Employment;

- (b) On the Job Professionalism; and
- (c) Salon Businesses.

Section 16. Shampoo and Style License Hours Required.

(1) A shampoo and style license student shall receive no less than 400 hours in clinical and theory class work with a minimum of:

- (a) 150 lecture hours for science and theory;
- (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
- (c) 275 clinic and practice hours.

(2) A shampoo and style license student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 17[14]. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

Section 18[15]. Student Records. Each school shall:

- (1) Maintain a daily attendance record for all full-time students, part-time students, and apprentice instructors;
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) Make records required by this Section available to the board and its employees upon request.

Section 19[16]. Certification of Hours.

(1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the school.

(2) No later than the 10th day of each month, a licensed school shall submit to the board via electronic delivery a certification of each student's total hours obtained for the previous month and the total accumulated hours to date for all students enrolled. Amended reports shall not be accepted by the board without satisfactory proof of error. Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.

Section 20[17]. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 21[18]. Instructor Licensing and Responsibilities.

(1) A person employed by a cosmetology, nail technology, or esthetic practices school for the purpose of teaching or instruction shall be licensed by the board as an instructor and shall post his or her license as required by 201 KAR 12:060.

(2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.

(3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.

(4) Licensed schools shall not permit an instructor to perform services in the school for compensation during school hours.

(5) An instructor shall not permit students to instruct or teach other students in the instructor's absence.

(6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a licensed school.

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if a licensed instructor is present.

(8) Licensed schools of cosmetology, esthetic practices, and nail technology shall, at all times, maintain a minimum faculty to

student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.

(9) Licensed schools of cosmetology, esthetic practices, and nail technology shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.

(10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

Section 22[19]. School Patrons.

(1) All services rendered in a licensed school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

(2) A licensed school shall not guarantee a student's work.

(3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

Section 23[20]. Enrollment.

(1) Any person enrolling in a school for a cosmetology, nail technician, or esthetics course shall furnish proof that the applicant has:

- (a) A high school diploma,
- (b) A General Educational Development (GED) diploma; or
- (c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.

(2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.

(3) A student enrolling in a licensed school who desires to transfer hours from an out of state school shall, prior to enrollment, provide to the board certification of the hours to be transferred from the state agency that governs the out of state school.

(4) If the applicant is enrolled in a board approved program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this Section is not necessary until examination.

Section 24[21]. Certificate of Enrollment.

(1) Schools shall submit to the board the student's digital enrollment, accompanied by the applicant's proof of education, as established in Section 23[20] of this administrative regulation, within ten (10) business days of enrollment.

(2) All student identification information on the school's digital enrollment shall exactly match a state or federal government-issued identification card to take the examination. If corrections shall be made, the school shall submit the Enrollment Correction Application and the enrollment correction fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information shall not be registered for an examination.

Section 25[22]. Student Compensation.

(1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and false promises to induce student enrollment.

Section 26[23]. Transfer. A student desiring to transfer to another licensed school shall:

(1) Notify the school in which the student is presently enrolled of the student's withdrawal; and

(2) Complete a digital enrollment as required for the new school.

Section 27[24]. Refund Policy. A school shall include the school's refund policy in school-student contracts.

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Section 28[25]. Student Complaints. A student may file a complaint with the board concerning the school in which the student is enrolled, by following the procedures outlined in 201 KAR 12:190.

Section 29[26]. Student Leave of Absence. The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

- (1) In writing from the student to the school; and
- (2) Clearly denote the beginning and end dates for the leave of absence.

Section 30[27]. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a licensed school shall report the name of the withdrawing student to the board.

Section 31[28]. Credit for Hours Completed. The board shall credit hours previously completed in a licensed school as follows:

- (1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and
- (2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 32. Program Transfer Hours. If a current licensee chooses to enter into the practice of cosmetology, they shall complete and submit the Program Transfer form. Upon receiving a completed Program Transfer form, the board shall treat the transferred license as earned credit hours in a cosmetology program subject to the following:

(1) Transfer of a current esthetics license shall credit the transferee no more than 400 hours in a cosmetology program;

(2) Transfer of a current nail technologist license shall credit the transferee no more than 200 hours in a cosmetology program;

(3) Transfer of a current shampoo and style license shall credit the transferee no more than 300 hours in a cosmetology program;  
or

(4) Transfer of a current barber license shall credit the transferee no more than 750 hours in a cosmetology program.

(5) Credit hours transferred pursuant to this section shall only take effect upon the transferee's completion of the remaining hours necessary to complete a cosmetology program.

Section 33[29]. Incorporation by Reference. The following material is incorporated by reference:

(1)(a) "Certification of Student Extracurricular Event Hours", October[February] 2018;[and]

(b) "Enrollment Correction Application", October[March] 2018;  
and

(c) "Program Transfer Form", October 2018.(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018, at 9:00 a.m., at Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. 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: Julie M. Campbell, Board Administrator,

111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, email [julie.campbell@ky.gov](mailto:julie.campbell@ky.gov), fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized education that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to all aspects of KRS 317A.050 and 317A.090 as amended by Senate Bill 106, passed during the 2018 regular session of the General Assembly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines and defines education standards and the quantity of course hours required for licensed schools and students seeking Kentucky licensure by 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: The amendment will revise the curriculum to comport with the recent amendments to KRS 317A.050 and 317A.090 contained in Senate Bill 106, which took effect on July 1, 2018. The amendment adds provisions for new "shampoo and style" licensing and education, as well as allowing for "theory" components of apprentice instructor education to be completed digitally. Finally the amendment establishes a process for transferring education hours into cosmetology licensing application.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to comply with Senate Bill 106, which amended KRS 317 to allow for a new type of "shampoo and style" license.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides curriculum guidelines for education based on the statutory amendments in Senate Bill 106 adding a new shampoo and style license to be incorporated in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated regulatory scheme for licensed schools that complies with the governing statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed cosmetology schools; all incoming students interested in pursuing a 'shampoo and style' license will be affected by this amendment. The amendment will also affect apprentice instructors seeking credit for digital "theory" curriculum and other board licensees seeking to transfer credit hours for a cosmetology license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed schools providing "shampoo and style" training will have to ensure their courses cover all topics set forth in the administrative regulation. Applicants seeking apprentice instructor licenses or seeking to transfer earned education credits to cosmetology applications will need to follow the steps set forth in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unclear what the cost to regulated entities will be for including "shampoo and style" training in courses. The board

anticipates additional costs will be offset by increased enrollment as more individuals pursue the new license types established by the passage of Senate Bill 106.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment enables licensed schools to enroll students into programs based upon the statutorily adjusted curriculum requirements of Senate Bill 106. Kentucky's regulatory scheme for licenses will fully comply with its authorizing statutes, and be more closely aligned with similar licensing schemes of other states.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All Kentucky Board of Cosmetology funding comes from fees collected from licensees and applicants. Current funding will not change as a result of this amendment.

(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 changes or increases in fees are anticipated as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created directly by this amendment. This amendment does relate to the new fees for "shampoo and style" licenses established in the board's concurrent proposal to amend 201 KAR 12:260.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation apply equally to all licensed schools and students.

#### 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? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050 and KRS 317A.060.

(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 is no anticipated effect on state or local government agency revenue as a result of this amendment.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue is anticipated as a result of this amendment.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated for the first year.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

#### GENERAL GOVERNMENT Kentucky Board of Cosmetology (Amendment)

#### 201 KAR 12:260. Fees.

RELATES TO: KRS 317A.050, 317A.062

STATUTORY AUTHORITY: KRS 317A.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations and the issuance, renewal, and restoration of licenses and permits. This administrative regulation establishes a fee schedule for applications, permits, and licenses issued by the board.

Section 1. The initial license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo and Style - fifty (50) dollars;
- (5) [(4)] Cosmetology instructor - fifty (50) dollars;
- (6) [(5)] Esthetic instructor - fifty (50) dollars;
- (7) [(6)] Nail Technology instructor - fifty (50) dollars;
- (8) [(7)] Beauty salon - \$100;
- (9) [(8)] Nail salon - \$100;
- (10) [(9)] Esthetic salon - \$100;
- (11) [(10)] School - \$1,500;
- (12) [(11)] School transfer of ownership - \$1,500;
- (13) [(12)] Salon transfer of ownership - \$100;
- (14) [(13)] Limited facility permit for a style bar, threading facility, lash extension facility, and makeup facility - \$100;
- (15) [(14)] Threading permit - fifty (50) dollars;
- (16) [(15)] Lash Extension Permit - fifty (50) dollars; and
- (17) [(16)] Makeup Artistry Permit - fifty (50) dollars.

Section 2. The renewal license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo and Style - fifty (50) dollars;
- (5) [(4)] Cosmetology instructor - fifty (50) dollars;
- (6) [(5)] Esthetic instructor - fifty (50) dollars;
- (7) [(6)] Nail Technology instructor - fifty (50) dollars;
- (8) [(7)] Beauty salon - \$100;
- (9) [(8)] Nail salon - \$100;
- (10) [(9)] Esthetic salon - \$100;
- (11) [(10)] School - \$250;
- (12) [(11)] Limited facility permit for a style bar, threading facility, lash extension facility, and makeup facility - \$100;
- (13) [(12)] Threading permit - fifty (50) dollars;
- (14) [(13)] Lash Extension Permit - fifty (50) dollars; and
- (15) [(14)] Makeup Artistry Permit - fifty (50) dollars.

Section 3. Applications for examination including retake applications shall be accompanied by a fee as follows:

- (1) Cosmetologist - seventy-five (75) dollars;
- (2) Nail technician - seventy-five (75) dollars;
- (3) Esthetician - seventy-five (75) dollars; and
- (4) Shampoo and Style - seventy-five (75) dollars; and
- (5) [(4)] Instructor - seventy-five (75) dollars.

Section 4. Miscellaneous fees shall be as follows:

- (1) Demonstration permit - fifty (50) dollars;
- (2) Certification of a license or school hours - twenty-five (25) [(twenty (20))] dollars;
- (3) Duplicate license - twenty-five (25) dollars;
- (4) Salon manager change - fifty (50) dollars;
- (5) School manager change - \$125;
- (6) Enrollment correction fee - fifteen (15) dollars;
- (7) Out of state endorsement application fee - \$100;
- (8) Apprentice instructor - fifty (50) dollars;
- (9) Student enrollment permit - twenty-five (25) dollars;

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- (10) Individual license restoration fee - fifty (50) dollars;
- (11) Salon license restoration fee, or limited facility permit restoration fee for a style bar, threading facility, lash extension facility, and makeup facility - \$100; and
- (12) School license restoration fee - \$500.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018, at 10:30 a.m., at the Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, email [julie.campbell@ky.gov](mailto:julie.campbell@ky.gov), fax (502) 564-0481.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a fee schedule for all applications, permits, and licenses issued by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out a fee schedule for all persons and entities seeking a permit or license from the KBC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes specific fees for those permits and licenses set forth in KRS Chapter 317A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific fees for the issuance, renewal, and restoration of licenses and permits, board exams, and other miscellaneous fees of the KBC.

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

(a) How the amendment will change this existing administrative regulation: This amendment creates fees for licensure for venues and employees at newly authorized "style bars" pursuant to Senate Bill 106, passed during the regular session of the 2018 general assembly. Additionally, the amendment raises the fee for certification of a license or school hours from twenty to twenty-five dollars to conform with other fees charged by the board and to more accurately reflect the administrative cost of such service.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to define implementation and licensing fees arising from the passage of Senate Bill 106 during the regular session of the 2018 general assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth all KBC fees based on updated statutory requirements in KRS Chapters 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the single administrative regulation setting out all applicable fees for applications, permits, and licenses issued by the KBC.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is uncertain how many current licensees or new applicants will seek licensure under the new

"shampoo and style" options offered by this amendment; given recent increases in popularity of such venues, the board anticipates a net growth in applications and licensees. Additionally, all licensees seeking certification of their license or school hours will be affected by a \$5 increase in the fee for such service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to pay the appropriate fees for licensure and board services, which now include "shampoo and style."

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Existing licensees will only face increases in costs if they seek certification of a license or school hours, in which case they will be subject to a \$25 fee rather than \$20. New licensees or existing licensees seeking the newly offered "shampoo and style" licenses may face a \$50 initial license fee, \$100 limited facility permit, \$50 renewal license fee, \$75 examination fee, and \$100 salon license restoration fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New licensing options allow for additional growth of shampoo and style establishments and provide opportunities for employment for individuals who may not be interested in pursuing full cosmetology licensure or who are in the process of completing all required education and testing.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is entirely self-funded through fees it collects for permits and licenses. There are no funds necessary to implement this amendment as it updates the fee schedule for applications, permits, and licenses.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment sets forth fees for licensing based on updated statutory requirements found in KRS Chapter 317A as amended by Senate Bill 106, passed during the 2018 regular session of the General Assembly.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all current and prospective licensees.

### 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 Kentucky Board of Cosmetology (KBC).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.062.

(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 KBC is a self-funded agency, deriving its funding solely from the fees it collects for permits and licenses. This amendment modifies the fee schedule in the existing administrative regulation. It is expected to result in an increase in revenue during the first year. Increased revenue is necessary to implement new licenses brought about by the passage of Senate Bill 106.

(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 is expected to result in increased revenue in subsequent years, which will be used to fund new initiatives and continued oversight of the board's licensees.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated during the first year.

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

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

Revenues (+/-): Increase.

Expenditures (+/-): No impact.

Other Explanation: This amendment updates fees and does not involve any expenditures. As explained above, the fee adjustments in this amendment are anticipated to result in increased revenue. The amount of increased revenue is dependent on the number of applicants for examinations and licenses. As some of the licenses are newly established by Senate Bill 106, the expected amount of increased revenue for those new licenses is currently unknown. Taking into account additional expenditures incurred from new licenses, permits, and national testing, it is anticipated that the increase in fees for existing examinations, permits, and licenses could result in as much as a 10-20% increase in revenue.

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)**

**201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.**

RELATES TO: KRS 218A.205(3)(h), (8), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.475

STATUTORY AUTHORITY: KRS 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(h) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(8) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure

does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying for a license as an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(b) Use the FBI Applicant Fingerprint Card;

(c) Pay any required fee to the KSP and the FBI;

(d) Complete the criminal record check within six (6) months of the date of the application; and

(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(h) and any relevant data on the applicant is received.

(4) An applicant shall provide evidence of completion of the jurisprudence examination required by KRS 314.042(1)(d).

**Section 2. Education and Clinical Experience.**

(1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section 12(5) of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

**Section 3. National Certifying Organizations.**

(1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse



Anesthetists;

(d) Pediatric Nursing Certification Board;  
(e) National Certification Corporation;  
(f) American Academy of Nurse Practitioners Certification Board; and  
(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

#### Section 4. Practice Pending Licensure.

(1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

#### Section 5. License Renewal.

(1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

#### Section 6. License Reinstatement.

(1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(c) Maintain and submit evidence of current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as

an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the KSP and the FBI;  
(b) Use the FBI Applicant Fingerprint Card;  
(c) Pay any required fee to the KSP and the FBI;  
(d) Complete the criminal record check within six (6) months of the date of the application; and  
(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction, if applicable.

(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

#### Section 7. Certification or Recertification.

(1) (a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The APRN shall notify the board if current certification or recertification has been obtained and provide evidence of the certification or recertification prior to the expiration date.

(2) (a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b)1. An APRN who does not provide evidence of current certification or recertification prior to its expiration date shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send notice to the APRN's address of record that the certification or recertification is about to lapse and a notice if the license has been voided.

2. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161 that indicate that reinstatement would create an immediate danger to the public health, safety, or welfare, then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report in such cases.

(3) An advanced practice registered nurse whose certification lapses or is not renewed by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

#### Section 12. Dual Designations.

(1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

KELLY JENKINS, President

APPROVED: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for Advanced Practice Registered Nurse (APRN) licensure and credentialing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.011 and KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting the licensure

and certification requirements for APRNs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting the licensure and certification requirements for APRNs.

(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 the requirement for a jurisprudence examination pursuant to KRS 314.042 as amended in 2018.

(b) The necessity of the amendment to this administrative regulation: The amendment is required by the statutory change.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make this amendment.

(d) How the amendment will assist in the effective administration of the statutes: By adding the statutory requirement of the jurisprudence examination for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN applicants, 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 follow the provisions of the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a minor cost to take the examination. The exact cost has not yet been determined.

(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 indirectly establishes a fee to take the examination.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### 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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## GENERAL GOVERNMENT CABINET

### Board of Nursing

#### (Amendment)

### 201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

RELATES TO: KRS 314.011, 314.042, 314.111, 314.131

STATUTORY AUTHORITY: KRS 314.042, 314.111(3), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(3) and 314.131(2) require the board to promulgate administrative regulations to set standards for the establishment and outcomes of nursing programs, to approve schools of nursing preparing persons for advanced practice registered nurse (APRN) licensure, and to monitor standards for APRN competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes standards for APRN programs of nursing[standards].

#### Section 1. Definitions.

(1) "APRN program coordinator" means that individual who is responsible for the administrative oversight of the educational unit that prepares a person for practice and licensure as an APRN and is licensed as an APRN in one (1) of the four (4) roles~~in the designated role and in the same population focus as the program~~.

(2) "APRN program of nursing" means the educational unit ~~[that]~~ for which the curricular design prepares a person for practice and licensure as an advanced practice registered nurse in one (1) of the four (4) roles.

(3) "APRN track coordinator" means that individual responsible for the oversight of the APRN track and is licensed as an APRN in the same role and population focus as the track;

(4) "~~Chief nurse administrator~~nursing academic officer" means the registered nurse who has academic and administrative authority for the overall nursing program.

(5)~~(4)~~ "National nursing accrediting body" means the Accreditation Commission for Education in Nursing (ACEN), the Commission for Collegiate Nursing Education (CCNE), the Commission on Nursing Education Accreditation (CNEA), the Council on Accreditation of Nurse Anesthesia Educational Programs (COA), or the Accreditation Commission on Midwifery Education (ACME).

(6)~~(5)~~ "Preceptor" means an advanced practice registered nurse, a physician, or a physician assistant who meets the standards established in Section 4 of this administrative regulation.

(7) "Role" means certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or clinical nurse specialist, as designated by the board pursuant to KRS 314.042.

(8) "Track" means the educational unit that prepares a person for practice and licensure as an APRN in one (1) of the four (4) roles and in a population focus as defined in KRS 314.011(20).

Section 2. Copies of all correspondence and reports between the APRN program of nursing or track and the national nursing accrediting body regarding accreditation shall be forwarded to the board by the APRN program of nursing or track at the time of

receipt or submission, but no later than thirty (30) days of receipt by the program.

#### Section 3. Establishing a New APRN Program of Nursing or Track.

(1) An institution may receive consultation from the board prior to establishing an APRN program of nursing or track.

(2) An institution that desires to establish and conduct an APRN program of nursing or track shall be accredited as outlined in 201 KAR 20:260, Section 2(1)(a).

(3) An institution shall submit ~~[information in the form of]~~ a letter of intent to establish an APRN program of nursing or track along with the fee required by 201 KAR 20:240, Section 1(2)(q).

(4) When the letter of intent~~[information]~~ is submitted to the board, the institution shall begin the accreditation~~[application]~~ process with a national nursing accrediting body and the Council on Postsecondary Education, if applicable.

(5)~~[The information shall be submitted to the board at least one (1) year prior to the first intended admission of students.]~~

(6)~~(7)~~ The letter of intent~~[information]~~ shall be completed under the direction of the registered nurse who shall serve as the chief nurse administrator~~[nursing academic officer]~~ or the APRN program coordinator.

(6)~~(7)~~ The letter of intent~~[information]~~ shall include:

(a) General information about the governing institution including the:

1. Mission;
2. Ownership;
3. Accreditation;
4. Enrollment;
5. Geographical area served; and
6. Resources that are sufficient to support defined outcomes and goals;

(b) A description and rationale for the APRN role and track~~[population focus program]~~ which includes the post-graduate certificate or graduate degree to be awarded;

(c) Approval from the governing body of the institution planning~~[proposing]~~ the APRN program of nursing or track or other empowered approval bodies as applicable;

(d) Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;

(e) Evidence of support from the community of interest;

(f) A description of physical or virtual resources adequate to meet the needs of the faculty and students; and

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the ~~[proposed]~~ program of nursing.

(7)~~(8)~~ If the ~~[information in the form of a]~~ letter of intent is approved by the board, the chief nurse administrator~~[governing institution]~~ shall be notified in writing that the program of nursing~~[it]~~ may move to the proposal phase. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent~~[information]~~ or it shall expire.

(8)~~(9)~~ (a) A completed~~[program]~~ proposal shall be submitted to the board by the governing institution for approval~~[at least one (1) year prior to the first intended admission of students].~~

(b) The ~~[program]~~ proposal shall include:

1. An organizational chart of the governing institution and a written plan which describes the organization of the program of nursing or track and its relationship to the governing institution;

2. A designation of the current or desired national nursing accrediting body to be used for the accreditation of the program;

3. a. A copy of the curriculum vitae of the APRN identified as the APRN program coordinator or track coordinator;

b. The program coordinator may serve as a track coordinator if the requirements of section 1(3) are met;

4. A timeline for the admission and enrollment of students, projected graduation of the first class, and any plans for expansion;

5. The philosophy of the APRN program or track and ~~[program]~~ outcomes for graduates;

6. Curriculum design for each identified population focus~~[track]~~ to include:

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- a. Proposed course sequence;
- b. Description of courses;
- c. Credit hours delineating those credits assigned to theory and practice;~~and~~

d. The total number of clinical hours designated for each~~track or~~ population ~~focus~~~~and~~;

e. Information regarding Kentucky nursing laws pertaining to APRNs, including scope of practice, licensure requirements, and the role of the board of nursing. This provision shall be implemented by January 1, 2020.

7. A five (5) year plan for securing clinical sites and preceptors sufficient to accommodate the number of students;

8. A five (5) year plan for recruiting and retaining qualified nurse faculty; and

9. Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

~~(9)~~~~(40)~~ The program shall not be announced or advertised, nor students admitted or enrolled until the proposal has been approved and developmental status has been granted by the board.

~~(10)~~~~(41)~~ Developmental status shall be the approval~~designation~~ granted by the board to an APRN program of nursing or track that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from a national nursing accrediting body. ~~Developmental status shall be for no more than a two (2) year period of time pending review and accreditation by a national nursing accrediting body.~~

~~(11)~~~~(42)~~ When developmental status has been granted by the board, implementation of the program or track may proceed~~with implementation~~ including the admission of students. ~~It shall be the responsibility of the chief nursing academic officer to notify the board of the admission and graduation of the first class.~~

~~(12)~~~~(43)~~ Developmental status of an APRN program shall expire if a class of students is not admitted within two (2) years of receiving developmental status.

~~(13)~~ It shall be the responsibility of the program of nursing to notify the board of the admission of the first class. The status of the program shall move automatically from developmental status to initial status upon admission of the first class and notification to the board.

~~(14)~~ All~~formal~~ communication between the APRN program of nursing and the national nursing accrediting body shall be forwarded to the board by the chief nurse administrator or the APRN program coordinator at the time of receipt from or submission to the accrediting body, but no later than~~within~~ thirty (30) days of receipt by the program.

~~(15)~~ The chief nurse administrator or the APRN program coordinator shall notify the board within thirty (30) days of any change in accreditation status.

~~(16)~~ The chief nurse administrator or the APRN program coordinator shall notify the board of pending site visits by the national nursing accrediting body and shall provide to the board copies of any formal communication submitted to the national nursing accrediting body at the time~~within thirty (30) days~~ of submission.

~~(17)~~ The decision to grant program approval by the board shall be based on review of the following:

(a) Achievement and continued approval by a national nursing accrediting body; and

(b) Reports of site visits conducted by a board representative to evaluate program compliance with administrative regulations.

~~(18)~~ The board may grant program approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section ~~4~~~~3~~. Compliance with National Nursing Accrediting Body Standards. An APRN program shall comply with the standards of its national nursing accrediting body.

Section ~~5~~~~4~~. Preceptor Standards.

~~(1)~~ In addition to the standards of the national nursing

accrediting body, the APRN program shall comply with the preceptor standards established in this section.

~~(2)~~~~(4)~~ The APRN program shall secure all necessary preceptors to students enrolled in the program. A student shall not be required to obtain their own preceptor, but may have input into the process. ~~(2) During the student's enrollment in the program, the student shall have some clinical experience with a preceptor who is an APRN with the same role and population focus for which the student is preparing.~~

~~(3)~~ The preceptor who is an APRN shall have at least one (1) year of clinical experience in the role and population focus for which the student is preparing.

~~(4)~~~~(a)~~ A physician or a physician assistant (PA) may serve as a preceptor.

~~(b)~~ The physician or PA who serves as a preceptor shall have at least one (1) year of clinical experience and shall practice in the same or similar population focus for which the student is preparing.

~~(5)~~ A preceptor shall not precept more than two (2) students at a time.

~~(6)~~ The APRN program shall have a written plan for orienting and evaluating a preceptor.

~~(7)~~ This section shall become effective on January 1, 2016.]

Section ~~6~~~~5~~. Ongoing Approval.

~~(1)~~ (a) The board shall be notified in writing of a change, vacancy, or pending vacancy in the position of the APRN program coordinator or the APRN track coordinator within thirty (30) days of the program of nursing's awareness of the change, vacancy, or pending vacancy.

1. The governing institution shall submit to the board in writing the name of the advanced practice registered nurse who has been designated to assume the administrative duties for the program or track, the date that person will assume the duties, and a copy of his or her curriculum vitae.

2. If there is to be a lapse between the date of the vacancy and the date the newly-appointed program administrator or APRN track coordinator assumes duties, the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

3. a The length of the appointment of an interim program administrator shall not exceed six (6) months. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

b. Progress reports shall be submitted if requested by the board. ~~The chief nursing academic officer shall notify the board within thirty (30) days of any change in the APRN program coordinator.~~

~~(b)~~ Approved APRN programs of nursing accredited by a national nursing accrediting body may be subject to a site visit at intervals associated with their national nursing accreditation.

~~(c)~~ The APRN program of nursing shall submit to the board the annual report it submits to the national nursing accrediting body.

~~(2)~~ The board requires continuous accreditation by a national nursing accrediting body.

~~(3)~~ The board may perform a site visit of a program on an announced or unannounced basis.

~~(4)~~ Factors that may indicate the need for a site visit and that jeopardize program approval status shall include:

(a) ~~Identified~~~~Reported~~ deficiencies in compliance with this administrative regulation;

(b) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives, outcomes, or policies;

(c) Ongoing failure to submit records or reports to the board within the designated time frame;

(d) Failure to provide sufficient clinical learning opportunities including securing preceptors for students to achieve stated outcomes;

(e) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(f) Failure to submit communication from the accrediting agencies within the time frames identified in Section 2 of this administrative regulation;

(g) Withdrawal of accreditation of either the program of nursing, college, or university by a national or regional accrediting body, or if accredited for less than the maximum accreditation period;

(h) Failure to obtain ~~approval of a change that requires~~ board approval at least six (6) months prior to implementation of:

1. The addition of a new APRN program of nursing or track, or
2. A change that affects the APRN program of nursing's compliance with the accreditation standards;

(i) Providing false or misleading information to students or the public concerning the program of nursing; or

(j) A change in the ownership or organizational restructuring of the governing institution.

(5) If the APRN program of nursing achieves reaccreditation, it shall submit documentation from the national nursing accrediting body to the board for action. If the board finds that all requirements have been met, the program shall continue to be eligible for approval.

(6) Action following a site visit:

(a) The board shall evaluate a program of nursing in terms of its compliance with this administrative regulation.

(b) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the chief ~~nurse administrator[nursing academic officer]~~ and to the APRN program coordinator for review and correction of factual data.

(c) The APRN program coordinator or designee shall be available during the discussion of the report at the board committee meeting to provide clarification.

(d) Following the board's review and decision, a letter shall be sent to the chief ~~nurse administrator[nursing academic officer]~~, the APRN program coordinator, and the head of the governing institution regarding any requirements to be met along with required timelines.

#### Section 7[6]. Withdrawal of Approval of an APRN Program.

(1) Approval of an APRN program may be withdrawn if:

- (a) It loses its national nursing accreditation; or
- (b) It is unable to or does not meet the requirements of this administrative regulation.

(2) The board shall send notice to the chief ~~nurse administrator[nursing academic officer]~~, the APRN program coordinator, and the head of the governing institution of its intent to withdraw approval.

(3) Within thirty (30) days of receipt of this notice, the chief ~~nurse administrator[nursing academic officer]~~ may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, approval shall be withdrawn and the program shall be closed. A closed program shall comply with 201 KAR 20:360, Section 5(2).

(4) (a) If a program requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The board shall decide whether the hearing shall be held before a hearing officer or before the full board.

#### Section 8. Licensure Requirement.

(1) The chief nurse administrator and the APRN program coordinator shall hold an unencumbered active RN license in this state or a privilege to practice pursuant to KRS 314.470. The APRN program coordinator shall also hold an unencumbered active APRN license in this state.

(2) Nurse faculty who teach via distance learning shall hold an unencumbered active APRN license and an unencumbered active RN license in the nurse faculty's primary state of residence.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for Advanced Practice Registered Nurse (APRN) programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.011, 314.042, and 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards for APRN programs of nursing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for APRN programs of nursing.

(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 several standards for APRN programs of nursing to meet, such as reporting of changes in accreditation status, use of preceptors, vacancies in the program administrator, etc.

(b) The necessity of the amendment to this administrative regulation: The amendment is required by KRS 314.111.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make this amendment.

(d) How the amendment will assist in the effective administration of the statutes: By setting standards for APRN programs of nursing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN programs of nursing. Presently, there are 30 programs.

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

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

(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 a program to meet the standards is unknown.

(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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS Chapter 13B, 218A.205, 314.011, 314.031, 314.071(4), 314.091, 314.107, 314.470, 314.991(3)

STATUTORY AUTHORITY: KRS 218A.205, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

##### Section 1. Receipt of Complaints.

(1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS 314.470, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are found to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint establishes a potential violation or the conduct falls within the statutory instances which shall be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record by U.S.P.S. regular mail. For licensees, the address of record is the last known address in accordance with KRS 314.107. For applicants, the address of record is the last known address in accordance with 201 KAR 20:370, Section 1(10). For holders of a multistate privilege, the address of record is the last known mailing address of record reported by the primary state of residence board of nursing to the NURSIS database. All further mailings to the respondent subsequent to the complaint shall be mailed by U.S.P.S. regular mail to the address of record, except a notice of hearing pursuant to KRS 13B.050 and a final order pursuant to KRS 13B.120, both of which shall be mailed by U.S.P.S. certified mail to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5) (a) A complaint shall be evaluated to find if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6) (a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.470. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

(7) (a) When the board receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance by an advanced practice registered nurse (APRN), it shall notify, within three (3) business days:

1. The Department of Kentucky State Police;
2. The Office of the Attorney General; and
3. The Cabinet for Health and Family Services, Office of the Inspector General.

(b) An investigation concerning a complaint filed against an APRN pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be commenced within seven (7) days of the filing of the complaint.

(c) The investigation shall be completed and a determination as to the disposition of the complaint shall be made within 120 days of the receipt of the complaint, unless an extension of time is requested by a law enforcement agency due to an ongoing criminal investigation.

##### Section 2. Disposition of Complaints.

(1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b) 1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be found that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS 314.470, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a



violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

~~(b) Notice of the hearing and charges shall be mailed by certified mail to the address of the licensee or applicant on file with the board pursuant to KRS 314.107.~~

~~(c) Notice of the hearing and charges shall be signed by the executive director or designee.~~

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that ensure protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege pursuant to KRS 314.470, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure issued by the board prior to filing an application for licensure;

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. Cured noncompliance with continuing education requirements, as established in 201 KAR 20:215, Section 3;

~~5. Executed an affidavit of reasonable cause concerning the AIDS education requirement and obtained the required education after the expiration of the six (6) months;~~

~~6. Tested positive on a drug screen for a nonprescribed drug or illicit substance and obtained a substance use disorder [chemical dependency] evaluation that does not indicate a diagnosis of substance use disorder [chemical dependency];~~

~~7. Failed to report a criminal conviction or disciplinary action against any professional license or credential in Kentucky or in another jurisdiction on an application;~~

~~8. Committed a substandard nursing act where:~~

~~a. The continuing practice by the nurse does not pose a risk of harm to the client or another;~~

~~b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;~~

~~c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and~~

~~d. The nurse subsequently has demonstrated the knowledge and skill to practice safely; or~~

~~9. As an advanced practice registered nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS):~~

~~a. Failed to register with KASPER;~~

b. Failed to report a DEA registration number to the board; or

c. Failed to notify the board of the CAPA-CS.

(b) The issuance of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license may be issued by board staff after the individual meets all requirements for licensure upon ratification of the consent decree by the board.

(d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.

(6) Special standards for an Advanced Practice Registered Nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS).

(a) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any felony offense after July 20, 2012 relating to controlled substances in any state shall be permanently banned from prescribing controlled substances.

(b) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have their authority to prescribe controlled substances suspended for at least three (3) months and further restricted as established by the board.

(c) The board shall mirror in time and scope any disciplinary limitation placed on an APRN licensed in Kentucky by a licensing board of another state if the disciplinary action resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances.

(d) An applicant for licensure in Kentucky as an APRN who has disciplinary action by a licensing board of another state which resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall have his or her application denied.

(e) Cases that come under KRS 314.011(21)(c) shall not be considered convictions for the purpose of this subsection.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

(1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform;

(2) Requiring the individual have continuous, direct, on-site supervision by a licensed nurse, physician, or dentist;

(3) Specifying the individual's practice setting;

(4) Specifying the types of patients to whom the individual may give nursing care;

(5) Requiring the individual to notify the board in writing of a change in name, address, or employment;

(6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements established by the board;

(7) Requiring the individual to submit to the board evidence of physical [or chemical dependency], mental health, neuropsychological, psychosocial, psychosexual, or substance use disorder evaluations, counseling, therapy, or drug screens;

(8) Meeting with representatives of the board;

(9) Issuing the license or temporary work permit for a specified

period of time;

(10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions;

(11) Requiring the individual to be employed as a nurse for a specified period of time; or

(12) Requiring the individual to complete continuing education in a specific subject.

Section 5. Anonymous Complaints. Section 1(2)(a) of this administrative regulation notwithstanding, the board shall accept an anonymous complaint if the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

Section 6. In accordance with federal law, the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018.

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for investigating and disposing of complaints.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.091.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a more detailed provision regarding mailing notices to licensees. It also removes unnecessary language regarding a previous requirement concerning HIV/AIDS education that was repealed.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to clarify the correct procedure for mailing notices. Also, the clean-up language is needed.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make this amendment.

(d) How the amendment will assist in the effective administration of the statutes: By setting procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: licensees with complaints, 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 follow the provisions of the administrative regulation.

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

(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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)

**201 KAR 20:162. Disciplinary proceedings~~[Procedures for disciplinary hearings pursuant to KRS 314.091].~~**

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. This administrative regulation establishes procedures for conducting an administrative hearing.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel.

(1) (a) Except as provided in subsection (b) of this section, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of which shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or
2. Other attorney designated by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or
2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

- (a) Discussed the merits of the action with agency staff;
- (b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of a disciplinary action.

(3) The hearing shall be transcribed by a court stenographer.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel.

(1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1), that shall be:

- (a) Consistent with the panel's deliberations; and
- (b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be upon the

licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Costs~~[Fee]~~.

(1) If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, the board may impose the following costs:

~~(a) [a hearing fee in an amount equal to]~~ The cost of stenographic services;

(b) The cost of the hearing officer as determined by subsection 2 of this section; and

(c) Other costs listed in subsection 3 of this section as applicable.~~[and the cost of the hearing officer shall be assessed against the licensee or applicant.]~~

(2) The cost of the hearing officer shall be determined as follows:

(a) A disciplinary hearing shall be \$400 per day;

(b) A reinstatement hearing shall be \$350; and

(c) A default shall be \$300.

(3) Other costs may include:

(a) Expert witness costs, including travel;

(b) Travel for other witnesses;

(c) Document reproduction costs; and

(d) The cost of a certified copy of laboratory testing records.

(4) In a case of financial hardship, the board may waive all or part of the costs~~[fee]~~.

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

Section 9. Prescribing or Dispensing Controlled Substance Cases.

(1) An investigation pertaining to prescribing or dispensing of a controlled substance shall produce a charging decision by the board within 120 days of the receipt of the complaint unless the circumstances of a particular complaint make it impossible to timely produce the charging decision.

(2) The board may hold an investigation pertaining to prescribing or dispensing of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

(3) If an investigation pertaining to prescribing or dispensing of a controlled substance does not produce a charging decision within 120 days of the receipt of the complaint, the investigative report shall plainly state the circumstances of that particular investigation or complaint that made timely production of a charging decision impossible.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for disciplinary hearings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.091.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a specific provision for the recovery of costs of a disciplinary hearing.

(b) The necessity of the amendment to this administrative regulation: The amendment is required by a statutory change in 2018. KRS 314.091(8) was added.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is required to make this amendment by KRS 314.091(8).

(d) How the amendment will assist in the effective administration of the statutes: By setting out what costs can be recovered.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: licensees have disciplinary hearings, 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 pay any costs assessed against them.

(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 the assessed costs, which will vary from hearing to hearing.

(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 sets what costs may be recovered.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### 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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? Unknown.

(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? Unknown.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

##### 201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 218A.205(3)(h), 314.011(12), 314.073, 314.991(1)-(3)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

##### Section 1. Definitions.

(1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation shall be as follows:

(1) Fourteen (14) contact hours of continuing education, which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;

(b) Be completed during the earning period; and

(c) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the earning period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or

(c) Have been recertified during the earning period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior; and

5. That is evidenced by an abstract of the project, which includes a summary of the findings;

(b) Publication of an article in a peer-reviewed health-related journal;

(c) A nursing continuing education presentation that is:

1. Designed and developed by the presenter;

2. Presented to nurses or other health professionals;

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and

4. Offered by a provider approved pursuant to 201 KAR 20:220; or

(d) Participation as a preceptor for at least one (1) nursing student or new employee.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one (1) to one (1) relationship between the preceptor and the student or employee.

3. The preceptor may train more than one (1) student or employee and may combine the hours to total 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The nurse shall submit:

1. The evaluation, which shall:

a. Cover a period of at least six (6) months during the earning period;

b. Be signed by the nurse's supervisor; and

c. Include the name, address, and telephone number of the employer; and

2. The Nursing Employment Evaluation Form.

(5) Contact hours of continuing education earned for subsection (1) or (4) of this section may earned by:

(a) A nursing continuing education presentation that is:

1. Designed and developed by the presenter;

2. Presented to nurses or other health professionals;

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and

4. Offered by a provider approved pursuant to 201 KAR 20:220.

5. The number of contact hours that may be earned shall be

twice the number of contact hours offered to an attendee of the presentation; or

(b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if relevant to nursing practice as determined by this subsection.

1. Contact hours shall be calculated as follows:

a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

2. The following courses shall be relevant to nursing practice:

a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or

b. An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.

4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 4. (1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) (a) Advanced practice registered nurses shall earn a minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) shall earn, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system, pain management, or addiction disorders.

(c) To qualify as pharmacology, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies, new regulations, or similar topics.

(d) Objectives for the contact hours related to pharmacology shall be identified. Casual mention of medications or medical treatments shall not qualify.

(2) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(3) Registered nurses and licensed practical nurses licensed after July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of licensure.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within twenty (20) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to cure the noncompliance if he or she:

1. Meets the continuing competency requirements within thirty (30) days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR



20:161, Section 2(5), within ten (10) days of notification by the board.  
(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

~~Section 7.[(1)—Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection (3) of this section.~~

~~(2) Contact hours shall be calculated as follows:~~

~~(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or~~

~~(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.~~

~~(3) The following courses shall be relevant to nursing practice:~~

~~(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or~~

~~(b) An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.~~

~~(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.~~

~~(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.~~

Section 8.] (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 8[9]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Individual Review", 9/2005; and

(b) "Nursing Employment Evaluation Form", 6/2016.

(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 a.m. to 4:30 p.m.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for continuing competency for license renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.073.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies what constitutes pharmacology continuing education. It also clarifies how continuing competency can be earned through a nursing presentation or postlicensure academic courses.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to clarify these matters.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.073 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying these matters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: licensees, APRN, RN, and LPN, approximately 80,000.

(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 understand what they need to use these methods of continuing competency.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.073(3), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the Board of Nursing to promulgate administrative regulations establishing requirements for continuing competency and approval of providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. Definition. "Continuing education activity" means an offering given by a provider of continuing education who has been approved or accepted by the board and that relates to the practice of nursing or contributes to the competency of a nurse extending knowledge beyond that obtained in initial nursing preparation or pertinent to specific work requirements.

Section 2. (1) A provider of continuing education applicant who wants approval by the board to offer a continuing education activity shall submit an:

- (a) Application for Provider Approval; and
- (b) Application fee as established in 201 KAR 20:240.

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) On or before September 30 of the year in which an approval period expires, an approved provider shall submit the:

- (a) Application for Provider Renewal; and
- (b) Fee as established in 201 KAR 20:240.

(4) Renewal shall be for two (2) years.

(5) (a) A continuing education activity that is given by a continuing education provider that has received[applicant may establish compliance by submitting evidence of] approval by one (1) of the following organizations shall be accepted by the board:

1. American Association of Nurse Practitioners;
2. American Association of Critical Care Nurses;
3. American Association of Nurse Anesthetists;
4. American College of Nurse Midwives;
5. American Nurses Credentialing Center;
6. Association of Women's Health, Obstetric and Neonatal Nurses;
7. Nurse Practitioners in Women's Health;
8. National Association of Pediatric Nurse Practitioners;
9. National Association for Practical Nurses Education and Service;
10. National Association[Federation] of Licensed Practical Nurses;
11. National League for Nursing; or
12. State Boards of Nursing.

(b) Paragraph (a) of this subsection shall include a provider that offers a continuing education activity related to the pharmacology requirement established in 201 KAR 20:215, Section 5(1)(a).

(6) (a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.

(b) An organization shall be included in this administrative regulation if its standards are comparable to the standards established by the provisions of this administrative regulation.

Section 3. (1) The board may review a provider's continuing education activities or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4) (a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time established in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 4. Providers shall comply with the standards in this section.

(1) (a) A registered nurse who meets the qualifications established in paragraph (b) of this subsection shall be administratively responsible for continuing education activities, including:

1. Planning;
2. Development;
3. Implementation; and
4. Evaluation.

(b) A nurse administrator shall:

1. Hold a current license or privilege to practice;
2. Have experience in adult education; and

3. Hold a baccalaureate or higher degree, in nursing.

(c) The provider may designate an alternate nurse administrator who shall meet the requirements established in paragraph (b) of this subsection.

(2) Organized learning activities shall be based upon a reasonable justification supporting the need for the continuing education that:

(a) Enhances the quality, safety, and effectiveness of care provided by nurses; and

(b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to:

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) Promote competence in decision making.

(4) Outcomes for continuing education activities shall be:

(a) Related to nursing practice and interventions;

(b) Stated in clearly defined expected learner outcomes; and

(c) Consistent with evidence of a need for the continuing education activity.

(5) The continuing education activity shall reflect planning among the nurse administrator, faculty, and content experts.

(6) (a) The content for each educational activity shall be documented in provider files and shall include the following:

1. The presentation schedule;

2. The name and credentials of the presenter and the topic to be covered;

3. Times for meals and breaks, if applicable;

4. Teaching methods, with corresponding time frames, for each content area; and

5. Learner outcomes.

(b) 1. The content shall be relevant to and consistent with the learner outcomes.

2. The learner outcomes shall provide statements of observable behaviors that present a clear description of the competencies to be achieved by the learner.

(7) Teaching methods shall be consistent with the content and learning outcomes and objectives, and shall reflect the use of adult learning principles. Activities of both the teacher and the learner shall be specified.

(8) Faculty for continuing education activities shall have:

(a) Documented expertise in the subject matter; and

(b) Experience in presenting to adult learners and facilitating adult learning.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment, and supplies to ensure quality teaching and learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

(a) Learner outcomes;

(b) Content overview;

(c) Date, time, and presentation schedule;

(d) Presenter;

(e) Number of contact hours;

(f) Fee and refund policy;

(g) Target audience and any prerequisites; and

(h) Requirements for successful completion that shall be clearly specified and shall include a statement of policy regarding candidates who fail to successfully complete the continuing education activity.

(12) Published information about continuing education activities offered by providers approved by the board shall include the provider number.

(13) (a) A provider shall notify the board in writing within thirty (30) days of any changes in its administration, such as nurse administrator, mailing address, or telephone number.

(b) Information relevant to the qualifications of the new nurse administrator as established in subsection (1)(b) of this section

shall be sent to the board.

(c) If a qualified nurse is not available to serve in the capacity of the administrator, the provider shall not offer any continuing education activity until a qualified nurse administrator is appointed.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to the pharmacology requirement of 201 KAR 20:215, Section 5(1)(a).

(15) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

(a) Title, date, and site of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning, learner outcomes, faculty, teaching, and evaluation methods;

(d) Participant roster, with a minimum of:

1. Name and signature; and

2. License number;

(e) Summary of participant evaluations;

(f) Number of continuing education contact hours awarded:

1. Contact hours shall be calculated by taking the total number of minutes that the participants will be engaged in the learning activities, excluding breaks, and divide by fifty (50); and

2. Partial hours shall be permissible after one (1) contact hour is earned;

(g) Master copy of certificate of completion awarded; and

(h) Identification of required instructional materials and references.

(16) Participants shall receive a certificate of completion that documents participation with the following information:

(a) Name of participant;

(b) Offering title, date, and location;

(c) The provider's name, address, telephone number, approval number, and expiration date of the providership;

(d) Name and signature of authorized provider representative; and

(e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity, which shall include:

(a) An evaluation tool that includes participant appraisal of achievement of each outcome, teaching effectiveness of each presenter, relevance of content to expected outcomes, effectiveness of teaching methods, and appropriateness of physical facilities; and

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) There shall be a summary of the participants' evaluations for each continuing education activity with an action plan with time lines for resolution of identified deficiencies.

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) For an offering that includes clinical practice, the instructor-student ratio for the clinical experience shall not exceed one (1) to ten (10).

(21) The following constitute in-service education and shall not be considered as a continuing education activity for purposes of this administrative regulation:

(a) An activity that is part of an employing agency's staff development program designed to provide information related to the work setting;

(b) On the job training;

(c) Orientation;

(d) Basic cardiopulmonary resuscitation; and

(e) Equipment demonstration.

Section 5. (1) The following forms are incorporated by reference:

(a) "Application for Provider Approval", 1/2017, Kentucky Board of Nursing; and

(b) "Application for Provider Renewal", 1/2017, 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.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for approval of nursing continuing education providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.073.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes some minor housekeeping changes.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed for clean-up purposes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.073 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: CE providers, approximately 100.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will not have to take any new actions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

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

RELATES TO: KRS 61.874(3), 314.027(2), 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), 314.073(8), 314.075(1), 314.101(4), 314.142(1)(b), 314.161, 314.171(4)

STATUTORY AUTHORITY: KRS 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), 314.073(8), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 314. KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(8), (10)(c), 314.042(3), (6), 314.051(2), (10)(c), 314.071(1), (2), and 314.073(8) require the board to establish fees for licensure, examination, renewal, reinstatement, and continuing

education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure Applications.

- (1) The board shall collect a fee for:
  - (a) An application for licensure; and
  - (b) Licensure renewal or reinstatement.
- (2) The fee for an application shall be:
  - (a) Licensure by endorsement as a registered nurse - \$165;
  - (b) Licensure by endorsement as a licensed practical nurse - \$165;
  - (c) Licensure by examination as a registered nurse - \$125;
  - (d) Licensure by examination as a licensed practical nurse - \$125;
  - (e) Renewal of license - fifty-five (55) dollars;
  - (f) Retired status - twenty-five (25) dollars;(g) Reinstatement of license - \$135;
  - (h) Paper copy of an application - forty (40) dollars;
  - (i) Full verification of licensure, credential or registration history - fifty (50) dollars;
  - (j) Licensure as an advanced practice registered nurse - \$165;(k) Renewal of licensure as an advanced practice registered nurse - fifty-five (55) dollars;
  - (l) Reinstatement of licensure as an advanced practice registered nurse - \$135;
  - (m) Name change - twenty-five (25) dollars;
  - (n) Application to establish a registered nurse or licensed practical nurse precicensure program of nursing pursuant to 201 KAR 20:280 - \$2,000;[or]
  - (o) Information submitted to establish an advanced practice registered nurse program pursuant to 201 KAR 20:062 - \$2,000; or
  - (p) Information submitted to establish an additional track pursuant to 201 KAR 20:062 - \$500.
- (3) An application or information submitted under this section shall not be evaluated by the board unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:

- (1) Initial provider approval - \$400;
- (2) Reinstatement of provider approval - \$400;
- (3) Renewal of approval - \$100; or
- (4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services.

- (1) The fee for a service shall be:
  - (a) Validation of the current status of a temporary work permit, provisional license, license, or credential:
    1. If requested in writing in individual nurse format - fifty (50) dollars; or
    2. If requested in writing in list format - fifty (50) dollars for the first name and twenty (20) dollars for each additional name;
  - (b) Copy of an examination result or transcript - twenty-five (25) dollars;
  - (c) Nursing certificate - thirty (30) dollars; or
  - (d) Release of NCLEX results to another state board of nursing - seventy-five (75) dollars.
- (2) An applicant for licensure who takes or retakes the licensure examination shall pay:
  - (a) The current examination fee required by the national council of state boards of nursing; and
  - (b) Application for licensure fee pursuant to Section 1 of this administrative regulation.
- (3) A graduate of a foreign school of nursing shall be responsible for:
  - (a) Costs incurred to submit credentials translated into English;
  - (b) Immigration documents; and
  - (c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.
- (4) A program of nursing that requires a site visit pursuant to 201 KAR 20:360, Section 5, shall pay the cost of the site visit to the

board.

Section 4. 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
- (3) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, or credential shall be issued the appropriate approval, license, or credential without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners.

- (1) The application fee shall be \$120.
- (2) The credential renewal fee shall be fifty (50) dollars.
- (3) The credential reinstatement fee shall be \$120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Bad Transaction Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee of thirty-five (35) dollars.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation sets fees for applications and services.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.161
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting fees.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting fees.

(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 sets a new fee for the establishment of an APRN track pursuant to 201 KAR 20:062.

(b) The necessity of the amendment to this administrative regulation: Changes to 201 KAR 20:062 required this new fee to be set.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.161 authorizes the Board to set fees.

(d) How the amendment will assist in the effective administration of the statutes: By setting a fee for the creation of a track within an APRN program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing with APRN education, approximately 30.

(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 pay the fee if applicable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee is \$500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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 establishes any fees or directly or indirectly increased any fees: It establishes a new fee.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### 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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? Unknown.

(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? Unknown.

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

(d) How much will it cost to administer this program for

subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

RELATES TO: KRS 314.041(1), 314.111(1), 314.131

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

#### Section 1. Definitions.

(1) "Campus" means a division of a college or university that has its own grounds, buildings, and students, but is administratively joined to the rest of the college or university.

(2) "Clerical assistance" means the provision of administrative, secretarial, or clerical help by qualified individuals that assists the program of nursing.

(3) "Clinical instructor" means a nurse who is employed by a program of nursing solely to provide students with traditional clinical or simulated experiences.

(4) "Nurse faculty" means a nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.

(5) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.

(6) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(7) "Nursing track" means a path within a program of nursing that leads to licensure as a nurse. [~~"Suspension of enrollment" means temporarily halting the admission of students into an approved program of nursing tract.~~]

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program of nursing who is qualified pursuant to 201 KAR 20:310 and is responsible for fulfilling the duties specified in subsection (3) of this section on a twelve (12) month basis;

2. Assure that at least fifty (50) percent~~and up to 100 percent~~ of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing, up to 100 percent. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

a. The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

b. If the exemption is granted, it shall be for twelve (12) months from board approval~~one (1) academic year~~. During this time, the governing institution shall not open a new program of nursing and shall not increase enrollment at an existing program of nursing;

3.~~Establish administrative policies;~~

4-] Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

4.[5.] Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

5.[6.] Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

6.[7.] Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

7.[8.] Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, and retention;

8.[9.] Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

9.[10.] Provide for the security, confidentiality, and integrity of faculty employment and student records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and
2. Available to the board for review.

(b) The board shall be notified in writing of a change, vacancy or pending vacancy in the position of the program administrator within thirty (30)~~fifteen (15)~~ days of the program of nursing's awareness of the change, vacancy or pending vacancy.

1. ~~The~~If the program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

a. ~~The effective date of the vacancy; and~~

b. ~~The~~ the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

2. a. If there is to be a lapse between the date of the change or vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

b. Progress reports shall be submitted if requested by the board.

3. a The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.~~4.a. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.~~

b. ~~A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse faculty.~~

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Submission of the qualifications of all nurse faculty and clinical instructors as set forth in 201 KAR 20:310, Section 4;

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate the implementation of written program policies for the following:

1. Student admission;
2. Student readmission and advance standing;
3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on ~~and off~~ campus and at any clinical activity required by the program of nursing;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporates the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h) 1. To initiate and coordinate the development~~and negotiation~~ of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes;~~and~~

2. To develop~~coordinate the development of~~ written criteria for the selection and evaluation of clinical facilities and ensure that the criteria shall be utilized by the program of nursing; and

3. To assure that clinical facilities show evidence of approval by the appropriate accreditation, evaluation, or licensure bodies, if applicable;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or other supervised learning experiences.



3. This ratio shall not apply to on campus skill lab experiences;  
(j) The submission of the Certified List of Kentucky Program of Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma, or certificate, regardless of the state in which the graduate intends to seek licensure;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies [shall] be current and replaced in a timely manner;

(n) To ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process and program outcomes;

(o) To coordinate an orientation to the roles and responsibilities of full-time, part-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials provide accurate and complete information to prospective students about the program including the:

1. Admission criteria;

2. ~~Nature of the~~ Program description, including course sequence, prerequisites, and corequisites~~—and academic standards~~;

3. Length of the program;

4. Current cost of the program, including tuition and all associated fees and expenses; and

5. Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and program of nursing support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend the next available[a] board orientation for program administrators but not later than within six (6) months~~(one (1)-year)~~ of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program;~~and~~

(w) To ensure that the curriculum is developed and implemented pursuant to 201 KAR 20:320; and

(x) To ensure that the program of nursing posts a link provided by the board to the information published by the board pursuant to 201 KAR 20:360, Section 5(4) on its web site and refers all individuals seeking information about the program to this link.

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings, which shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5); and

3. Performance evaluation for faculty employed more than one

(1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications of the governing institution including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures;

(c) A description of student services;

(6) Clerical assistance and support staff.

(a) There shall be clerical assistance and support staff sufficient to meet the needs of the nursing program for the administrator, faculty, and students~~at the main campus~~.

~~(b)[A non-main campus shall have additional clerical assistance and support staff sufficient to meet its needs.] If the program of nursing does not have at least one (1) dedicated clerical staff, the program administrator shall provide written justification to the board. The board shall evaluate the justification. If the board rejects the justification, the program of nursing shall take the necessary steps to comply.~~

(7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools for each course that measure the progression of the student's cognitive, affective, and psychomotor achievement of course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(j) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis;

(k) Evaluate the student's experience, achievement, and progress in relation to course and clinical outcomes, with input from the clinical instructor and preceptor, if applicable; and

(l) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure; and

(8) Clinical instructors with the authority and responsibility to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor, if applicable;

2. The course responsibilities;

3. The course or clinical outcomes;

4. A course evaluation tool; and

5. Situations in which collaboration and consultation shall be needed;

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes; and

(d) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure.

Section 3. Notification of Change in Enrollment.

~~(1)[a] Within sixty (60) days of the effective date of this~~

~~administrative regulation.] All[existing] programs of nursing shall have on record with[submit to] the board the maximum number of new students that the program is able to enroll in one (1) academic year. This number shall be referred to as the program's enrollment baseline.[(b) A program of nursing that begins operation after the effective date of this administrative regulation shall submit its enrollment baseline in the initial application.]~~

(2) (a) A program of nursing that desires to increase its enrollment beyond its enrollment baseline shall submit a request to the board[shall submit a request for an increase in enrollment by twenty (20) percent or more of the enrollment baseline or ten (10) students, whichever is greater]. The request shall be sent in writing at least two (2) months prior to the date for which the requested increase is being sought. Exceptions to this time frame shall only be made for exigent circumstances. The request is only necessary if the increase is greater than the following:

1. If the enrollment baseline is fifty (50) or less, an increase of ten (10) students;

2. If the enrollment baseline is fifty-one (51)-100, an increase of twenty (20) students; or

3. If the enrollment baseline is greater than 100, an increase of twenty-five (25) students.

(b) The request shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment. These sufficient resources shall include adequate:

1. Number of qualified faculty;
2. Classroom space;
3. Clinical sites;
4. Clerical support; and
5. Financial support.

(c) The program shall investigate the projected impact of the increase on the operation of programs of nursing within a fifty (50) mile radius and shall submit a report to the board.

(d) The program of nursing shall submit evidence that it has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f).

(3) (a) The request shall be reviewed by board staff. Board staff may approve the request if it is determined that the criteria listed in this subsection have been met.

(b) If board staff determines that the criteria have not been met, the request shall be referred to the board. The board shall evaluate if the program has sufficient resources prior to making the decision of whether to grant or deny the request.]

Section 4. Multiple Campuses. (1) (a) A governing institution may have programs of nursing located on different campuses.

(b) Each campus shall be considered a separate program of nursing.

(2)(a) The governing institution shall designate a main campus headed by a program administrator.

(b) The program administrator shall have final responsibility and authority for the non-main campuses, but shall designate an assistant program administrator to assist in the governance of each non-main location. The assistant program administrator shall meet the qualification for a nurse faculty as set out in 201 KAR 20:310. The program administrator may designate the amount of release time for the assistant program administrator for administrative duties, but it shall not be less than twenty-five (25) percent.

(3) For purposes of calculating benchmarks set out in 201 KAR 20:360, Section 5(2)(f), each campus shall individually report its data annually to the board. The board shall evaluate the benchmarks for each campus individually.

Section 5. Suspension of Enrollment. (1) A governing institution that decides to suspend enrollment in the program of nursing shall notify the board in writing within thirty (30) days following the decision. No longer enrolling in one of several nursing tracks within a program of nursing shall not constitute suspension of enrollment for purposes of this administrative regulation.

(2) The notification shall identify the reasons leading to the decision and how long it is anticipated that the suspension will be in effect.

(3) The governing institution shall report to the board annually

on the status of the suspension.

(4) (a) If the decision to reinstate enrollment is made within three (3) years of the decision to suspend enrollment, the governing institution shall notify the board in writing of the decision within thirty (30) days.

(b) The notification shall state the date classes will begin. It shall also list the faculty and clinical sites that will be utilized.

(5) If the decision to reinstate enrollment is made three (3) years or more from the decision to suspend enrollment, the governing institution shall comply with the procedures outlined in 201 KAR 20:280.

#### Section 6. Change in Accreditation.

(1) A governing institution that seeks to change the U.S. Department of Education recognized accrediting body from which it receives accreditation shall notify the board when it has filed an application for accreditation.

(2) The board shall deem that the governing institution is in compliance with Section 2(1)(a) of this administrative regulation as long as the application is in process before the accrediting body.

(3)(a) If the application is denied, the governing institution shall no longer be deemed to be in compliance.

(b) The board shall begin the process established in 201 KAR 20:360, Section 7 for withdrawal of approval.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets organization and administration standards for prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards.

(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 makes several changes most of which are housekeeping in nature. It also adds a new section requiring the governing institution to report any change in its accrediting body.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed revision to keep it current and relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language and adding the needed new section.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing, approximately 150.

(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 comply with the standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.111, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review schools, approve qualified schools, and, if appropriate, withdraw approval for schools of nursing. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. This administrative regulation establishes the standards for the development and approval of programs that prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

#### Section 1. Definitions.

(1) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse. ~~"Developmental status" means approval of the proposal.~~

(2) "Initial status" means admission of the first class.

(3) ~~"Program approval" means permission by the board to operate a program of nursing.]~~

#### Section 2. Establishment of a Program of Nursing.

(1) The governing institution may receive consultation from the board prior to establishing a program of nursing.

(2) The governing institution that desires to establish and conduct the program of nursing shall be accredited as established in 201 KAR 20:260, Section 2.

(3) The governing institution shall consider each campus as a separate program of nursing.

#### Section 3. Letter of Intent.

(1) The governing institution shall submit to the board a letter of intent to establish a prelicensure program of nursing and the fee required by 201 KAR 20:240.

(2) The letter of intent shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as established in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable;

(b) The results of a feasibility study that includes the following information related to the need for the program of nursing:

1. Nursing workforce supply and demand data from the past year for the area within a fifty (50) mile radius and projected supply and demand; and

2. A description of the applicant pool that is being targeted and how this population will be reached;

(c) Evidence that an introductory letter has been sent to all program[s] of nursing administrators within a fifty (50) mile radius;

(d) Documentation from cooperating healthcare agencies within a fifty (50) mile radius ~~[in the community]~~ that they will provide support for the creation of the program of nursing. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the program;

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(f) A timeline for the hiring of a full time program administrator, admission of students, and projected graduation of the first class;

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and

maintaining the proposed program of nursing;

(h) A copy of the curriculum vitae of the registered nurse involved in the planning; and

(i) Description and rationale for the proposed type of program of nursing, including the establishment of an enrollment baseline as required by 201 KAR 20:360, Section 3(1)(b).

(4) (a) If concerns are raised about the need for the program or about the ability of the program to obtain appropriate clinical sites, a hearing shall be held before the board's education committee to act upon the letter of intent.

(b) At the conclusion of the hearing, the committee shall recommend to the board whether or not to approve the letter of intent.

(c) If the letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The governing institution shall appoint a qualified program administrator and provide appropriate resources, consultants, and faculty to develop the proposed program plan. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent or the letter of intent shall expire.

#### Section 4. Proposal Phase.

~~(1)[(a)] A completed program proposal shall be submitted to the board by the governing institution for approval. [(b) If the governing institution has not completed the program proposal within one (1) year of the date of the approval of the letter of intent, the program proposal shall be void and the governing institution shall comply with Section 3 of this administrative regulation.]~~

(2) The program shall not be announced, advertised, or students admitted to the program of nursing until the proposal has been approved and developmental status has been granted by the board.

(3) The program proposal shall include:

(a) Philosophy, mission, and learning outcomes of the governing institution;

(b) An organizational chart of the governing institution and written plan, which describes the organization of the program of nursing and its relationship to the institution;

(c) Proposed philosophy, mission, and learning outcomes for the proposed program;

(d) Curriculum design including proposed courses, description, sequence and credit hours delineating those credits assigned to theory and clinical;

(e) Student recruitment plan and the enrollment baseline as set out in 201 KAR 20:260, Section 3(1)(b);

(f) A five (5) year plan for recruiting and retaining qualified nurse faculty;

(g) A proposed job description for the program administrator reflecting authority and responsibility;

(h) A description of faculty offices, classrooms, clinical skills laboratory, library facilities, conference rooms, and learning resources;

(i) A description of support services for students, to include provision of health services or evidence of an emergency plan for care, academic advisement, student services, mechanism for obtaining learning resources, and financial aid;

(j) Availability and willingness of accredited agencies to provide clinical experiences across the curriculum. This information shall include the:

1. A list of clinical agencies and hours available for clinical experience~~[Shifts and days students will work];~~

2. Number of students each agency can accept;

3. Clinical experience that will be available from each agency;

4. Other nursing programs that utilize this agency; and

5. Plan to avoid displacement of students from existing programs;

(k) Policies and procedures for student admission to the program of nursing~~[selection]~~ and progression, including the plan to retain students so as to maintain a low attrition rate;

(l) Availability of~~[A plan for]~~ clerical assistance and support staff as set out in 201 KAR 20:260, Section 2(6);

(m) A general plan for an on-going, research based planning and evaluation process that incorporates a systematic review of the program that results in continuing improvement; and

(n) A description of financial resources to support the program including a budget for the first three (3) years with projected revenues and expenditures and the amount of resources going to institutions or organizations for contractual or support services.

(4) The program of nursing may~~[shall]~~ meet with the board staff to clarify, verify, and amplify materials included in the program proposal.

(5) The governing institution shall be notified in writing of action taken by the board on the proposal.

(a) If the board determines that all requirements have been met, the program shall be granted developmental status.

(b) The board, in collaboration with the program, shall determine an opening date.~~[(6) Developmental status shall be withdrawn if program requirements are not met or if a class is not enrolled within eighteen (18) months after the board granted developmental status.]~~

~~(a) If a proposed program does not comply with 201 KAR 20:260 through 360, developmental status may be withdrawn.~~

~~(b) The governing institution shall be notified in writing of the withdrawal of developmental status.~~

~~(7) Students shall not be admitted to the program of nursing until developmental status has been granted by the board.~~

~~(8) Failure to submit board required reports within the designated time period may result in the withdrawal of developmental status.~~

~~(9) Employment of program administrator and faculty.~~

~~(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to submission of the proposal to the board.~~

~~(b) The faculty as established in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.~~

~~(10) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first class begins course requirements.~~

~~(11) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.~~

~~(12) The program of nursing shall submit semi-annual progress and evaluation reports to demonstrate implementation of the approved proposal until the first class graduates.~~

~~(13) Site visits shall be conducted by the board as necessary.]~~

#### Section 5. Developmental Status.

(1) Students may be admitted after developmental status is granted.

(2) Employment of program administrator and faculty.

(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to opening.

(b) The faculty as established in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

(3) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first class begins course requirements.

(4) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.

(5) The program of nursing shall submit semi-annual progress and evaluation reports or other reports as requested by the board to demonstrate implementation of the approved proposal until the first class graduates.

(6) Site visits shall be conducted by the board as necessary.

(7) Developmental status may be withdrawn if:

(a) A proposed program does not comply with 201 KAR 20:260 through 360;

(b) A class is not enrolled within eighteen (18) months of the date the board granted developmental status; or

(c) The governing institution fails to submit board required reports within the designated time period.

(8) The governing institution shall be notified in writing of the intent to withdraw developmental status. The governing institution may request reconsideration by the board. The request shall be in writing and sent no more than thirty (30) days from the date of the

notification.

Section 6[5]. Initial Status and Program Approval.

(1) The status of the program shall move automatically from developmental status to initial status upon admission of the first class.

(2) It shall be the responsibility of the program of nursing to notify the board of the admission of the first class.

(3)[(2)] The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

(4)[(3)] Eligibility for program approval occurs after the graduation of the first class. Within sixty (60) days after graduation of the first class, the faculty shall submit a written report that:

(a) Evaluates the implementation of the program of nursing compared to the approved proposal; and

(b) Addresses compliance with the standards set by 201 KAR 20:260 through 360.

(5)[(4)] The decision to grant or deny program approval shall be based on review of the report submitted by the program of nursing and a site visit report by a representative of the board.

(6)[(5)] If program approval is denied, the applicant may request a hearing pursuant to KRS Chapter 13B.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for the approval process for prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards.

(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 makes several changes most of which are housekeeping in nature. It particularly clarifies developmental status.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed revision to keep it

current and relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language and adding the needed new section.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing, approximately 150.

(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 comply with the standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)

**201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.**

RELATES TO: KRS 314.111, 314.470

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing that prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Definitions.

(1) "Clinical instructor" means a registered nurse who is employed by a program of nursing to provide students with traditional clinical or simulated experiences.

(2) "Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.

(3) "Nurse faculty" means a registered nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.

(4) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.

(5) [(2)] "Unencumbered" means a license without current disciplinary conditions or restrictions. Enrollment in an alternative to discipline program is not an encumbrance.

Section 2. Faculty for Prelicensure Registered Nurse and Practical Nurse Programs.

(1) (a) The faculty shall include a program administrator and shall include at least one (1) other nurse faculty.

(b) [1. The faculty may include clinical instructors in the major areas of nursing practice.

2.] The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the students, the number of students and classes admitted annually, and the educational technology utilized.

(c) [(b)] The program administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(d) [(e)] A program shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each program location.

(2) Program administrator qualifications. The program administrator for a registered nurse or a practical nurse program shall have:

(a) A minimum of a master's or higher degree in nursing from an accredited college or university. In lieu of a master's degree, the program administrator shall have completed that portion of a doctoral degree that would be equivalent to a master's in nursing degree while enrolled in an accredited college or university with a timeline in place for degree attainment. The program administrator shall provide documentation that shows active and steady progression towards the doctoral degree;

(b) A minimum of five (5) years of nursing experience within the immediate past seven (7) [ten (10)] years [and demonstrated leadership experience];

(c) A minimum of two (2) years of full time teaching experience at or above the academic level of the program of nursing; and]

(d) An unencumbered current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky;

(e) A current knowledge of nursing practice at the level of the

program; and

(f) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation.

(g) A program administrator without previous program administrator experience shall have a mentor assigned by the governing institution and an educational development plan implemented. The mentor shall have documented experience in program administration.

(3) [(a) Except as provided by paragraph (b) of this subsection, the program administrator for a practical nurse program shall have:

1. A master's or higher degree in nursing from an accredited college or university;

2. A minimum of five (5) years of nursing experience within the past ten (10) years with demonstrated leadership experience;

3. Current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky;

4. A minimum of two (2) years full-time teaching experience at or above the academic level of the program of nursing; and

5. A current knowledge of nursing practice at the practical or vocational level.

(b) A program administrator who is currently employed at a practical nurse program and who does not meet the requirements of paragraph (a) of this subsection [on the effective date of this administrative regulation because of the lack of a master's degree] may continue to be employed at the program of nursing where the program administrator is presently, but shall earn the master's degree or higher in nursing on or before July 1, 2021 [within five (5) years of the effective date of this administrative regulation].

(4) Didactic faculty qualifications.

(a) Nurse faculty in a [baccalaureate degree] prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:

1. A master's degree within the discipline of nursing or have completed that portion that would be equivalent to a master's in nursing degree; or

2. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree.

3. Nurse faculty in an associate degree nursing program may be employed with a baccalaureate degree in nursing, but shall complete, within five (5) years of the date of employment, a master's degree commensurate with either subparagraph 1 or 2 of this paragraph.

(b) [Nurse faculty in an associate degree prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:

1. A master's degree within the discipline of nursing or have completed that portion of a nursing program that would be equivalent to a master's in nursing degree;

2. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree; or

3. A baccalaureate degree with a major in nursing or have completed that portion of a state approved program of nursing that would be equivalent to a baccalaureate degree, and the nurse faculty member shall complete within five (5) years of hire a master's degree commensurate with either subparagraph 1. or 2. of this paragraph.

(c) [Nurse faculty in a practical nurse program shall have a minimum of a baccalaureate degree with a major in nursing from an accredited college or university.

(c) [(d)] The nurse faculty shall hold a temporary work permit or a current unencumbered license or privilege to practice as a registered nurse in the Commonwealth of Kentucky [except as set out in paragraph (i) of this subsection].

(d) [(e)] The nurse faculty shall document a minimum of two (2) years full time or equivalent experience as a registered nurse



within the immediate past five (5) years and shall have and maintain expertise in the clinical or functional area of responsibility~~[appropriate to teaching responsibilities]~~.

~~(e)(f)~~ The nurse faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.~~[(g) Nurse faculty shall have and maintain expertise in the clinical or functional area of responsibility.]~~

~~(f)(h)~~ Nurse faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

~~(g)(i)~~ 1. Non-nurse faculty members who teach nursing courses required within the curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.

2. Non-nurse faculty shall be required to collaborate with a nurse faculty member in order to meet the nursing course outcomes.

~~(h)(j)~~ Nurse faculty who teach via distance or on-line~~[and will not physically practice within the state]~~ shall hold an unencumbered active nursing license to practice as a registered nurse in the nurse faculty's primary state of residence.

(5) Skills laboratory and clinical instructor qualifications.

(a) A clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(b) A clinical instructor for either a registered nurse or practical nurse program shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site.

(c) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience~~[within the functional area]~~ as a registered nurse within the immediate past five (5) years and evidence of clinical competence appropriate to teaching responsibilities.

~~(d) For a registered nurse program, [the educational preparation of]~~ the clinical instructor shall have the following qualifications:

1. For an associate degree nursing program, a registered nurse;

2. For a baccalaureate degree nursing program, a registered nurse with a baccalaureate degree in nursing or higher[at least equal the level of the appointing program].

(e) For a practical nurse program, the clinical instructor shall be a registered nurse.

(f) A skills laboratory instructor shall have the same qualifications as a clinical instructor.

### Section 3. Preceptors.

(1) A preceptor may be used to enhance clinical learning experiences. If a preceptor is used, it shall be done after a student has received clinical and didactic instruction from the program faculty in all basic areas for the course or specific learning experience.

(2) A preceptor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site. In a practical nursing program, a preceptor may hold a current unencumbered license, privilege, or temporary work permit to practice as a licensed practical nurse in the state of the student's clinical site.

(3) A preceptor shall have evidence of clinical competencies related to the area of assigned clinical teaching responsibilities.

(4) A preceptor shall not be used to replace clinical instructors. The ratio of student to preceptor shall not exceed two (2) to one (1). Clinical instructors or nurse faculty retain responsibility for student learning and confer with the preceptor and student for the purpose of monitoring and evaluating learning experiences.

(5) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be utilized by the faculty, and documented role expectations of faculty, preceptor, and student.

### Section 4. Reporting of Registered Nurse Program and Practical Nurse Program Faculty Qualifications and Appointments.

(1) Evaluation of faculty records. The program administrator shall submit to the board the qualifications of nurse faculty and clinical instructors within thirty (30) days of appointment.

(a) Official academic transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(c) Faculty appointments shall be reported to the board in writing.

(d) The program administrator shall report a change in faculty composition within thirty (30) days of appointment or vacancy.

~~(2)[Reevaluation of faculty records.]~~ The board shall review annually the qualifications of the faculty employed in the program of nursing.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for faculty for prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards for faculty.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for faculty.

(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 makes several changes most of which are housekeeping in nature. It provides standards for faculty qualifications, including the program administrator.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed revision to keep it current and relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 authorizes the Board to make

these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing, approximately 150.

(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 comply with the standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### **201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse[nursing] programs.**

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

#### Section 1. Definitions.

(1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(4) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse[an educational entity that offers the courses and learning experiences that prepare graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN or NCLEX-PN examinations].

(5) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(6) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

#### Section 2. General.

(1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the

nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes-planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including scope of practice, licensure requirements, and the role of the board of nursing. This provision shall be implemented by January 1, 2020.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

(e) The curriculum shall have written measurable program outcomes[competencies] that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months

prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or re-conceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation [during the last semester or quarter of a nursing program].

### Section 3. Simulation Standards.

(1) (a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

~~(2)[Upon request by the board, a program of nursing shall provide evidence that the standards set in this section have been met.~~

~~(3)(a) The program of nursing shall provide[adequate fiscal, human, and material] resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.~~

(b) Simulation activities shall be managed by a nurse[faculty member as established in 201 KAR 20:310, Section 2,] who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse[faculty member] shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

~~(c)[There shall be a budget that will sustain the simulation activities and training of the faculty.~~

~~(d)~~ The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

~~(d)[(e)]~~ The program of nursing shall have an orientation plan for faculty concerning simulation.

~~(e)[(f)]~~ The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

~~(3)[(4)]~~ The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

~~(4)[(5)]~~ Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

~~(5)[(6)]~~ The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.~~[(7)(a) The program of nursing shall develop written criteria to evaluate the simulation activities.~~

~~(b) Students and faculty shall evaluate the simulation experience on an ongoing basis.]~~

(8) Beginning July 1, 2019, a program of nursing shall submit

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evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1)[The program of nursing shall include information about its use of simulation in its annual report to the board].

### Section 4. Use of External Examinations.

(1) An external examination is a standardized examination not produced by the program of nursing.

(2) A program of nursing shall not require the completion of an external examination as a determinant for a student's progression or graduation.

(3) An external examination may be used to assist in the remediation of a student or as part of a final course grade. If used as part of a final course grade, it shall not count for more than ten (10) percent of the grade.

### Section 5. Statutory Additions.

(1) Every program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) Every program of nursing shall include information about pediatric abusive head trauma as it is defined in KRS 620.020.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for the curriculum of prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards for curriculum.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for curriculum.

(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 makes several changes most of which are housekeeping in nature. It also adds two new sections, one dealing with the use of external examinations and one dealing with pediatric abusive head trauma and domestic violence..

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed revision to keep it current and relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language and adding the new sections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing, approximately 150.

(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 comply with the standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)

**201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.**

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.041(1), 314.051(1), 314.111, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 authorizes the board to regulate nursing education programs. This administrative regulation establishes the standards to be met regarding students in those programs.

Section 1. Students in Programs of Nursing.

(1) Admission requirements and practices shall be stated and published in the governing institution's publications and shall include an assessment of achievement potential through the use of previous academic records and, if applicable, the use of preadmission examination scores consistent with curriculum demands and scholastic expectations.

(2) Program information communicated by the program of nursing shall be accurate, complete, consistent, and publicly available.

(3) Participation shall be made available for students in the development, implementation, governance, and evaluation of the program.

~~Section 2. (1) The board shall annually compile information on how the programs of nursing met the benchmarks established in 201 KAR 20:360, Section 5(2)(f). This information shall be published on the board's Web site.~~

~~(2) A program of nursing shall post a link to the information compiled pursuant to subsection (1) of this section on the program's Web site. The link shall be displayed on the program of nursing's home page.~~

~~(3) A program of nursing shall post a physical copy of the information compiled pursuant to subsection (1) of this section in the school's facility in a place that is accessible to the general public.~~

Section 3. Student Policies.

(1) Student policies of the program of nursing shall be congruent with those of the governing institution. Any difference shall be justified by the program of nursing.

(2) Program of nursing student policies shall be accurate, clear, and consistently applied.

(3) Upon admission to the program of nursing, each student shall be advised in electronic or written format of policies pertaining to:

~~(a) Approval status of the program as granted by the board;~~

~~(b) Policies on Admission, transfer or readmission, advanced or transfer placement, withdrawal, progression, graduation, suspension, or dismissal;~~

~~(b)(c) Evaluation methods to include the grading system;~~

~~(c)(d) Tuition, fees and expenses associated with the program of nursing and refund policies;~~

~~(d)(e) Availability of counseling resources;~~

~~(e)(f) Health requirements and other standards as required for the protection of student health;~~

~~(f)(g) Grievance procedures;~~

~~(g)(h) Program of study or curriculum plan;~~

~~(h)(i) Financial aid information;~~

~~(i)(j) Student responsibilities;~~

~~(j)(k) Student opportunities to participate in program development, implementation, governance, and evaluation; and~~

~~(k)(l) Information on meeting eligibility for licensure; and~~  
~~(l)(4) A plan for emergency care on campus or at any clinical activity required by the program of nursing during class or clinical time shall be in writing and available to faculty and students.~~

Amended Administrative Regulation

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for students in prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards for students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for students.

(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 makes several changes most of which are housekeeping in nature.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed revision to keep it current and relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing, approximately 150.

(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 comply with the standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:350. Educational facilities and resources for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111(1), 314.131(1)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 authorizes the board to regulate nursing education programs. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. This administrative regulation establishes the standards for programs of nursing to assure the provision of adequate facilities and resources for conduct of the program of nursing.

Section 1. The facilities and resources shall be provided by the governing institution to meet the teaching and learning requirements of students and nurse faculty of the program of nursing.

Section 2. Physical Facilities.

(1) The facilities shall be designed to meet the outcomes of the

program of nursing and to foster administrative and instructional activities.

(2) Space allocated for the program shall be based on the number of students and teaching and learning methods.

(3) The physical facilities shall include:

(a) Classrooms, clinical skills laboratory, and conference rooms essential to fulfill program outcomes and adequate in size for the number of students;

(b) Adequately equipped office space to fulfill the essential functions for administrative personnel, faculty, and clerical staff, including the maintenance of confidentiality of student information;

(c) Storage space for equipment and instructional materials;

(d) A private office for the program administrator; and

(e) Space available for use in private counseling with students.

(4) The program of nursing shall report to the board any major changes in the physical facilities, including new buildings.

#### Section 3. Library and Learning Resources.

(1) Instructional material shall be readily available for use in teaching and learning.

(2) The program, through ownership or formal arrangements, shall provide student and nurse faculty with access to an adequate library collection consistent with the program offered. The library collection shall be current and include sufficient titles, references, periodicals, and other material to achieve the outcomes of the curriculum.

(3) The program shall ensure that students and nurse faculty have access to instruction on the use of the library resources.

(4) The use of technology shall enhance student learning and shall be appropriate for meeting the outcomes of the program. Students shall have access to and instruction in the use of the technology.

(5) There shall be sufficient technical [and clerical] support services available to meet the needs of the nurse faculty and the students.

(6) The collection of library resources for the program of nursing shall be allocated on the same basis as the collections for other departments in the governing institution.

(7) All students shall have comparable access to library and learning resources regardless of the student's location.

(8) A system of acquisition and deletion shall exist that ensures currency and appropriateness of library resources. [Section 4. Clinical Facilities. (1) The program shall arrange for the clinical practice experience of students in the clinical facilities.

(2) Clinical facilities shall show evidence of approval by the appropriate accreditation, evaluation, or licensure bodies, if applicable.]

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).



# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for educational facilities for prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards.

(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 makes several changes most of which are housekeeping in nature.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed revision to keep it current and relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing, approximately 150.

(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 comply with the standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

**201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.**

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body.

(1) (a) A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through 201 KAR 20:360 and shall not have to demonstrate compliance every eight (8) years as required by Section 2 of this administrative regulation. The accredited program shall comply with Sections 3 through 10 of this administrative regulation.

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:260 through 201 KAR 20:360. The board may also conduct site visits in accordance with Section 5 of this administrative regulation or at intervals associated with their national nursing accrediting body.

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body.

(1) A prelicensure registered nursing or licensed practical nursing program that is not accredited by a national nursing accrediting body recognized by the United States Department of Education shall be required to demonstrate compliance with 201 KAR 20:260 through 201 KAR 20:360 at least every eight (8) years for continued approval.

- (2) (a) A site visit shall be conducted at least every eight (8) years.
- (b) A specific list of information required for review shall be sent by the board to the program of nursing prior to the site visit.
- (3) Prior to the site visit, the program of nursing shall submit:
  - (a) A self-evaluation report that provides evidence of compliance with 201 KAR 20:260 through 201 KAR 20:360; and
  - (b) Other related information as requested by the board.

### Section 3. Reports and Evaluation.

- (1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through 201 KAR 20:360. It shall also submit the benchmarks set out in Section 5(2)(f) of this administrative regulation.
- (2) To verify continued compliance with 201 KAR 20:260 through 201 KAR 20:360, the program of nursing shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.
- (3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty~~[shall establish an evaluation plan and]~~ shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board.~~[Revisions to the evaluation plan or report shall be submitted with the annual report.]~~
- (4) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.~~[The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregate analysis, and trending of data.]~~
- (5) The evaluation report~~[plan]~~ shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:
  - (a) Organization and administration of the program of nursing;
  - (b) Curriculum;
  - (c) Resources, facilities, and services;
  - (d) Teaching and learning methods including distance education;
  - (e) Faculty evaluation;
  - (f) Student achievement of program outcomes;
  - (g) Graduation rates;
  - (h) Licensure examination pass rates;
  - (i) Employment rates of graduates; and
  - (j) Clinical resources, including laboratory and simulation.
- (6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.
- (7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the program.

Section 4. Benchmarks~~[Calculation of Pass Rate. (4)]~~ The board shall utilize the following benchmarks to evaluate a program of nursing. Except for the pass rate, the benchmarks shall be calculated annually from July 1 to June 30. The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

- (1) The pass rate for first time takers of the NCLEX who tested within twelve (12) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070;
- (2) The faculty turnover rate. A faculty member whose employment ends on or before June 30 of any year shall be counted in that year's calculation;
- (3) The program administrator turnover rate;

(4) The graduation rate;

(5) The faculty grievance rate; and

(6) The student grievance rate.~~[(2) Individuals included in the annual calculation shall have tested within six (6) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070.]~~

### Section 5. Site Visits.

- (1) The board may conduct site visits at any time.
- (2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through 201 KAR 20:360 are being met:
  - (a) Denial, withdrawal, or change of status by a national nursing accrediting agency;
  - (b) Providing false or misleading information to students or the public concerning the program;
  - (c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 201 KAR 20:360;
  - (d) A change in physical facilities;
  - (e) Information received by the board that may indicate a violation of 201 KAR 20:260 through 201 KAR 20:360;
  - (f) A change in any of ~~the~~these benchmarks listed in section 4 of this administrative regulation as follows:
    - 1. A pass rate as calculated by Section 4 of this administrative regulation that:
      - a. Is less than an average of eighty (80)~~[eighty-five (85)]~~ percent for three (3) consecutive years; or
      - b. Varies above and below eighty (80)~~[eighty-five (85)]~~ percent from year to year over the previous five (5) years;
    - 2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;
    - 3. A program administrator turnover rate of more than three (3) individuals in five (5) years;
    - 4. A graduation rate of less than sixty (60) percent of the original admitted cohort of newly-enrolled students within the maximum time frame allowed for completion. The maximum time frame shall be determined by multiplying the standard program length for normally progressing students by 1.5. Calculation of the graduation rate shall include students who are enrolled for the first time in the first nursing course of the nursing program curriculum. All students admitted within the original cohort shall be included in the calculation regardless of whether a student may be excluded from the calculation utilized by a national nursing accrediting body;
    - 5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or
    - 6. Substantiated student grievances and appeals of more than ten (10) percent of the~~[nursing]~~ student population enrolled in the nursing program each year; or
    - (g) Failure to submit reports as required by 201 KAR 20:260 through 201 KAR 20:360.

(3) A program of nursing that fails to meet one or more benchmarks for a year shall submit a report that examines the factors that contributed to the failure to meet and shall provide a description of the corrective measures to be implemented.

(4)(a) The board shall annually compile information on how the programs of nursing met the benchmarks. This information shall be published on the board's Web site.

(b) A program of nursing shall post a link to the information compiled pursuant to paragraph (a) of this subsection on the program of nursing's Web site. The link shall be easy to locate on the program's home page.

Section 6. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:260 through 201 KAR 20:360 by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 7 of this administrative regulation.

Section 7. Withdrawal of Approval. (1) If, in the opinion of the board, the standards established by 201 KAR 20:260 through 201 KAR 20:360 are not being met, the board shall send notice to the program administrator of the affected program of nursing of its intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. Any other student shall not be allowed to apply for licensure or take the licensure examination, unless the student graduates from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.

Section 8. Voluntary Closure of a Program. (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be

submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to a third party vendor approved by the Council for Postsecondary Education ~~[the board]~~ for safekeeping. ~~[4. The transcript of the student or graduate shall identify the date on which the program closed.]~~

~~2. The board shall be consulted about the disposition of all other program records.]~~

Section 9. Change in Ownership or Organization of the Governing institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through 201 KAR 20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section 10. Incorporation by Reference. (1) "Annual Report of the Program of Nursing", 10/18 ~~[42/45]~~, Kentucky Board of Nursing, is incorporated by reference.

(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.

KELLY JENKINS, President

APPROVED: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for continued approval and periodic evaluation of prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards.

(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 makes several changes most of which are housekeeping in nature. It also clarifies the benchmarks a program must meet.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed revision to keep it current and relevant.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 authorizes the Board to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By cleaning up the language and clarifying the benchmarks.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Programs of nursing, approximately 150.

(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 comply with the standards.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575

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. KRS 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. Definitions.

(1) "Adolescent" means a child who has reached the onset of physiologically normal puberty;

(2) "Pediatric" means a child who has not reached the age of eighteen (18);

(3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent[a] sexual assault victim[~~fourteen (14) years of age or older~~] and to promote and preserve the victim's biological, psychological, and social health.

(4) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

(5) "SANE course" includes the SANE-A/A course and the SANE-P/A course.

#### Section 2. SANE Course Approval Application.

(1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, 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.

(3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines.~~[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 as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;

(b) Course outcomes, which 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 for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which 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 include:~~

~~— a. Detailed genital and anal inspection, including speculum insertion, visualization techniques, and use of equipment supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner until the student is deemed competent by the supervisor;~~

~~— b. Sexual assault history taking and examination techniques with evaluation supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner;~~

~~— c. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;~~

~~— d. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate; and~~

~~— e. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process.~~

~~3. The didactic portion of the course shall include instruction consistent with the Sexual Assault Nurse Examiner (SANE) Education Guidelines. It shall also include:~~

~~— a. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and~~

~~— b. The victim's bill of rights, KRS 421.500 through 421.575.]~~

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) 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.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the

SANE-P/A course shall include:

1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;

3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process;

4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and

5. The victim's bill of rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

1. Principles of child development;

2. Techniques for acute evaluations;

3. An overview of Kentucky Child Advocacy Centers; and

4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

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, containing at a minimum the name, Social Security number, and license number for each participant.

(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 on the Application for Initial or Continued SANE Course Approval 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 procedure established in this section 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-A/A or SANE-P/A credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;

(b) Have completed a board approved SANE educational course or a comparable course;

1. The board or its designee shall evaluate the applicant's course to determine its course comparability; and

2. 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) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(f) Use the FBI Applicant Fingerprint Card;

(g) Pay any required fee to the KSP and the FBI;

(h) Complete the criminal record check within six (6) months of the date of the application;

(i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(j) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the appropriate 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)(e) of this section and any conviction is addressed by the board.

#### Section 8. Renewal.

(1) To renew the SANE-P/A or the SANE-A/A 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 or forensic nursing 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 Annual Credential Renewal Application: SANE Credential with RN in Kentucky 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 appropriate 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, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a criminal record check by the KSP and FBI;

(e) Using the FBI Applicant Fingerprint Card;

(f) Paying any required fee to the KSP and the FBI;

(g) Completing the criminal record check within six (6) months of the date of the application;

(h) Providing a certified or attested copy of the court record of

any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) 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 approval 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", 10/2018[6/2014], Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for Credential", 10/2018[8/2016], Kentucky Board of Nursing;

(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 10/2018[5/2018], Kentucky Board of Nursing;

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 10/2018[5/2018], Kentucky Board of Nursing; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2015, International Association of Forensic Nurses.

(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, 8:00 a.m. to 4:30 p.m.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette



(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for Sexual Assault Nurse Examiner (SANE) programs and credential requirements for the SANE.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.142.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting 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: The amendment creates two credentials: SANE Adult and Adolescent and SANE Pediatric and Adolescent. The program standards for both credentials are set out.

(b) The necessity of the amendment to this administrative regulation: There is a need for SANEs to be able to take care of child sexual assault victims. This amendment will address that need.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.142 authorizes the Board, with the advice of the Sexual Assault Response Team Advisory Committee, to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By providing for SANEs who are qualified to care for children who are victims of sexual assault.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sexual Assault Nurse Examiner applicants, 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 comply with the standards to obtain the credential.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.142.

(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? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 400 KAR 2:060. Definitions.

RELATES TO: KRS[146.425], 146.460, 146.490

STATUTORY AUTHORITY: KRS 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485 requires the Office of Kentucky Nature Preserves[Commission] to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves, and for the conduct of office[commission] affairs. This administrative regulation provides for the defining of certain essential terms used in 400 KAR 2:060 through 400 KAR 2:100.

Section 1. (1) "Advisor" means any individual selected by the office[commission] to serve in an advisory capacity to the office[commission] pursuant to KRS 146.435;

(2) "Articles of dedication" means the writing by which any estate, interest, or right in a natural area and[~~/or~~] buffer area is formally dedicated as provided in KRS 146.410 to 146.530;

(3) "Act" means the enabling legislation of the Office of Kentucky Nature Preserves[Commission] KRS 146.410 to 146.530;

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board["Commission"] means the Kentucky Nature Preserves Commission;

(5) "Cabinet" means the Energy and Environment [Environmental and Public Protection] Cabinet;

(6) "Director" means the executive director of the Office of Kentucky Nature Preserves

(7) "Secretary" means the Secretary of the Energy and Environment[Environmental and Public Protection] Cabinet;

(8)[(7)] "Custodian" means any person, organization, agency, or institution selected by the office[commission] to serve as the managing agent for a nature preserve;

(9)[(8)] "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains or has reestablished to some degree, in the judgment of the office[commission], its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest;

(10)[(9)] "Nature preserve" means a natural area, and land necessary for its protection, any estate, interest or right which has been formerly dedicated under the provisions of KRS 146.410 to

146.530 to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance, or artificial development, for the public purposes of present and future scientific research, education, aesthetic enjoyment, and habitat for plant and animal species and other natural objects;

(11)(10) "Inventory of natural types, flora and fauna" is a database of flora and fauna occurring in Kentucky, and of natural types and ecological communities identified by the office to be monitored for the purpose of complying with the provisions of the Act;

(12)(11) "Register of natural areas" means the list of those natural areas worthy of preservation but not available or desirable for dedication. Terrestrial natural areas may only be registered with the consent of the landowner; stream segments may be registered upon such a determination by the office.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines certain essential terms used in 400 KAR 2:060 through 400 KAR 2:100.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms to be used in 400 KAR Chapter 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation defines terms that are essential to correctly interpreting the administrative regulations in 400 KAR Chapter 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes authorize the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation assists in the administration of those statutes by defining essential terms for the correct interpretation of the administrative regulations in this chapter.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the definitions to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the state nature preserves and natural areas.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this amendment. The amendments simply makes definitional changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 definition administrative regulation does not involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted by this proposal and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENERGY AND ENVIRONMENT CABINET  
Office of Kentucky Nature Preserves  
(Amendment)**

**400 KAR 2:070. The Office of Kentucky Nature Preserves[Commission].**

RELATES TO: KRS 146.410,[146.425,] 146.430

STATUTORY AUTHORITY: KRS 146.425(2), 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485 requires the Office of Kentucky Nature Preserves[Commission] to make and publish administrative regulations for the conduct of office[commission] affairs. This administrative regulation sets forth the [administrative structure of the commission and] rules for transacting the business of the office[commission].

Section 1. [Officers. (1) The officers of the commission shall be a chairman and a secretary.

(2) The chairman and secretary shall be elected annually by the commission at its first regular meeting in the calendar year.

(3) Duties of officers.

(a) The chairman shall preside at meetings of the commission. In the name of the commission, and subject to its approval, he shall sign the minutes of each meeting, certifying that the minutes have been approved by the commission to be recorded as the minutes of that meeting. On behalf of the commission, and with its consent, he shall approve and sign contracts, memoranda of agreement, Articles of Dedication, natural areas registration certificates, out-of-state travel vouchers, and such other agreements as may be entered into, and approved by, the commission, unless such authority is delegated to the secretary or director of the commission.

(b) The secretary of the commission shall perform the duties of the chairman when the chairman is unable to execute his duties due to absence or other disability. The secretary shall record the minutes of the meetings of the commission in the manner set forth in this regulation. The secretary shall sign the minutes of each meeting, to certify that they are an accurate record of the meeting and are to be recorded as the minutes of the meeting.

Section 2.] Director. The secretary[commission] may hire a full-time director who shall be qualified by training and experience to administer the duties of the office[commission], that[which] shall include the following:

(1) Employing personnel, including interim and grant funded time limited staffupon the advice and consent of the commission];

(2) Approval, as indicated by his signature thereto, of documents necessary to perform the administrative function of the office[commission], including, but not limited to, time sheets, leave and compensatory time request forms, in-state travel approval, and request for purchase and payment forms;

(3) Signing of documents requiring the signature and approval

of the office[chairman of the commission] to certify that the documents have been reviewed by the office[commission] staff;

(4) Managing the day to day affairs of the office[commission], and its staff;

(5) Preparing a report on the condition of each nature preserve and each[registered] natural area to be submitted to the Legislative Research Commission by October 1st[commission at its final quarterly meeting] in each even numbered year; and[-]

(6)[Such] Other duties as may be directed by the secretary. [commission and recorded in the minutes of its meetings.

Section 3. ~~Meetings. (1) There shall be four (4) quarterly meetings of the commission each year. A schedule of meetings including times and places for the coming year shall be set by the commission at its last meeting of the calendar year. This schedule may be altered upon motion approved by a quorum of the commission.~~

(2) Special meetings of the commission may be called at such time and place as designated by the chairman or four (4) members of the commission.

(3) Notice of regular quarterly meetings of the commission shall be given to each member of the commission and advisors, in writing by mailing not less than seven (7) nor more than twenty-one (21) days prior to the meeting. The notice shall contain a date, time, and place of the meeting, and set forth the agenda of the meeting. Special meetings shall require three (3) days notice.

(4) Minutes of meetings. Minutes shall be kept of all meetings of the commission and recorded in volumes kept for that purpose in the office of the commission.

(5) Conduct of meetings.

(a) "Robert's Rules of Order, Revised" shall govern the conduct of all meetings of the commission.

(b) The order of business at all meetings of the commission shall be as follows:

1. Roll call and establishment of a quorum, which shall consist of three (3) members of the commission;
2. Reading and disposition of the minutes of the previous meetings;
3. Report of the director;
4. Old business;
5. New business.;

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the rules for transacting the business of the office.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the actions that will be taken by the director of the Office of Kentucky Nature Preserves.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the conduct of the office. This administrative regulation sets forth the rules for transacting the business of the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes authorize the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation assists in the administration of those statutes by establishing rules for transacting the business of the office.

(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: SB 129 from the 2018 Legislative Session abolished the Nature Preserves Commission as part of the reorganization of the Energy and Environment Cabinet. The duties of the Nature Preserves Commission were given to the newly formed Office of Kentucky Nature Preserves. This amendment makes changes to the administrative regulation related to the passage of SB 129 by deleting language related to the commission membership and meeting dates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the conduct of the office. The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the state nature preserves and natural areas.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this amendment. The amendments simply make changes to conform to the reorganizational amendments from SB 129.

(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 these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

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

No funding source is required to amend 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 fees are 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 or fee increases.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 400 KAR 2:080. Dedication of nature preserves and registration of natural areas.

RELATES TO: KRS 146.410, 146.420, 146.440, 146.470, 146.490, 146.505

STATUTORY AUTHORITY: KRS 146.460, 146.465, 146.475, 146.485, 146.495

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485 requires the ~~office~~~~commission~~ to establish rules for the selection, acquisition, management, protection, and use of natural areas and nature preserves, and to maintain a state registry of natural areas, an inventory of natural types, flora and fauna, and other records of natural areas and nature preserves. This administrative regulation sets forth procedures for the dedication and maintenance of nature preserves, and the registration and maintenance of inventories relating to natural areas and nature preserves.

Section 1. Dedication of Nature Preserves. (1) Upon the determination by the director~~of the commission~~ that an area

constitutes a natural area worthy of protection through dedication as a nature preserve, and that the owner is willing to have the[his] land or a portion thereof dedicated as a nature preserve, the office may dedicate[director may recommend to the commission that] the natural area[be dedicated] as a nature preserve.

(2)(a) A natural area shall become a nature preserve upon signature of the director upon the[acceptance of] articles of dedication[by the commission].

(b) Articles of dedication shall be recorded in the county in which the natural area is located, the office of the secretary of state, and the office~~[of the commission]~~.

Section 2. Articles of Dedication. (1) The articles of dedication shall be used as the guidelines for the management of each nature preserve. Management, use, development and public access of each nature preserve shall be in accordance with the provisions set forth in the articles of dedication.

(2) The articles of dedication may contain restrictions relating to management, use, development, transfer, and public access, as well as~~[such]~~ other provisions as may be necessary to further the purposes of the Act.

(3) Articles of dedication may vary in provisions from one (1) nature preserve to another in accordance with differences in the characteristics and conditions of the area involved, or for other reasons found necessary by the commission and the landowner, grantor, devisor, or donor.~~[(4) Before the Commonwealth of Kentucky, through the commission, acquires a nature preserve, it shall be the responsibility of the director to propose to the commission provisions for incorporation into the articles of dedication.]~~

Section 3. Amendment of Articles of Dedication. (1) Articles of dedication may be amended by the office[commission] upon a finding~~[by the commission]~~ that the[such] amendment will not permit an impairment, disturbance, use or development of the nature preserve inconsistent with the purposes for which the area was dedicated or inconsistent with the Act. No amendment to articles of dedication shall be made without the written approval of the Kentucky Heritage Land Conservation Fund Board.

(2) If fee simple ownership is not held by the Commonwealth of Kentucky, no amendment to the articles of dedication shall be made without the written consent of the owner of other interests therein.

(3) Findings and determinations of the office [commission] to amend articles of dedication may be set forth in the minutes of the board [commission].

Section 4. Buffer Areas. (1) For the purpose of protecting a nature preserve, adjoining land that is not otherwise suitable for dedication as part of the nature preserve may be dedicated as a buffer area in the same manner as a nature preserve.

(2) The articles of dedication may contain provisions for the management, use, development, and public access of the buffer area that differ from those for the adjacent nature preserve.

Section 5. Registration of Natural Areas. (1) Upon the determination by the director~~[of the commission]~~ that an area constitutes a natural area worthy of preservation, which is not otherwise available for dedication,~~[the director may recommend to the commission that]~~ the area shall be entered into the register of natural areas.

(2) An[No] area shall not be registered without the consent of the landowner or managing public agency.

(a) The[Such] consent may include an agreement by the landowner to give notice to the office[commission] of any change in ownership, allow limited public access, or include voluntary management agreements designed to protect the natural features of the area.

(b) Upon request of the landowner or managing public agency the location of registered areas shall be kept confidential and not released as a public record of the office[commission]. Specific information as to the location of the registered natural area also may, upon determination by the office[commission], be restricted

so as to assure protection of the natural features and limit uncontrolled visitation.

(3) Registration~~[by the commission]~~ of certain natural areas, where no landowner or managing public agency can give consent, involving stream segments deemed waters of the Commonwealth, shall be by determination of the office[commission].

(4) Natural areas owned in fee simple by the office, but not dedicated as a nature preserve, shall be managed under a management plan in accordance with 418 KAR 1:060 and this chapter.

Section 6. Identification of Natural Areas.~~[(4)]~~ For the purposes of identifying natural areas for potential conservation[protection as nature preserves areas], the office shall[commission may] develop, maintain, and periodically update an inventory database of natural types, ecological communities, flora and fauna. The office[commission] shall use the inventory database, and the best available scientific information, to identify species and ecological communities[of animals and plants] to be monitored by the office[commission]. This inventory database and all relevant scientific data collected by the office or other from research, studies, inventories, management plans, permits, or other means shall be incorporated into a central clearinghouse database pursuant to KRS 146.485.[(2) The commission may develop, maintain, and update a list of natural areas which warrant protection through dedication as a nature preserve or registration as a natural area.]

Section 7. Selection of Custodian. (1) When the commission has acquired an interest less than fee simple in a nature preserve, the selection of a custodian may be made by the owner of the other interest therein subject to the rules and administrative regulations of the commission and the articles of dedication for the nature preserve. Otherwise the commission shall determine the custodian, if any.

(a) The custodian shall demonstrate to the commission the ability to administer the nature preserve in accordance with the articles of dedication and these administrative regulations.

(b) The commission shall act as custodian of a nature preserve until such time as a custodian is approved, or if the custodian fails to administer a nature preserve in accordance with the articles of dedication and these administrative regulations.

(2) When the commission has acquired a fee simple interest in a nature preserve, the commission may select a custodian.

(a) The nature preserve shall publish notice of its intent to select a custodian in the county, or counties, in which the preserve is located, and for the state at large.

(b) The notice shall state:

1. The location of the nature preserve;[-]
2. Where the articles of dedication are recorded;[-]
3. That a written proposal is to be submitted to the commission;[-]
4. The date by which the proposal shall be submitted; and[-]
5. The address to which the proposal shall be submitted.

(c) The date by which the written proposal is to be submitted to the commission shall be not less than sixty (60) days after the date of publication of the notice.

(d) A hearing shall be conducted for the purpose of selecting a custodian pursuant to the provisions of 400 KAR 2:100.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed



administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth procedures for the dedication and maintenance of nature preserves, and the registration and maintenance of inventories relating to natural areas and nature preserves.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for the dedication and maintenance of nature preserves, and the registration and maintenance of inventories relating to natural areas and nature preserves.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation establishes the procedures for the dedication and maintenance of nature preserves, and the registration and maintenance of inventories relating to natural areas and nature preserves.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes authorize the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation assists in the administration of those statutes by establishing the procedures for the dedication and maintenance of nature preserves, and the registration and maintenance of inventories relating to natural areas and nature preserves.

(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: SB 129 from the 2018 Legislative Session abolished the Nature Preserves Commission as part of the reorganization of the Energy and Environment Cabinet. The duties of the Nature Preserves Commission were given to the newly formed Office of Kentucky Nature Preserves. This amendment makes changes to the administrative regulation related to the passage of SB 129 by replacing language related to the commission to reference the newly established office.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the administrative regulation to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the state nature preserves and natural areas.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this amendment. The amendments simply make changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information and requirements are essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

## 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 Kentucky Nature Preserves will be impacted by this proposal and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years?

This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.



ENERGY AND ENVIRONMENT CABINET  
Office of Kentucky Nature Preserves  
(Amendment)

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

RELATES TO: KRS 146.410, 146.440

STATUTORY AUTHORITY: KRS 146.465, 146.475, 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485(2) authorizes the commission to promulgate administrative regulations for the management, use, and protection of nature preserves. KRS 146.465 authorizes the commission to acquire natural areas for the purpose of dedicating the areas as nature preserves. KRS 146.475 requires that a nature preserve shall be subject to administrative regulations promulgated by the commission. This administrative regulation establishes the requirements for the management and use of all nature preserves and to fulfill the purposes of KRS 146.440.

Section 1. Applicability. This administrative regulation shall apply to a nature preserve unless a specific exception is set forth in the articles of dedication. The reasons for any exception shall be set forth in the records of the office[commission]. This administrative regulation shall also apply to undedicated natural areas protected by the office unless a specific exception is set forth in the management plan or a specific exception is set forth in regulation.

Section 2. Boundary Markers.

(1) ~~Nature preserve~~ Boundaries shall be made evident by posting boundary markers in a conspicuous manner.

(2) If a boundary fence or barrier is installed, it shall not be in a form that will create a detrimental effect on the movement of wildlife or other natural objects.

Section 3. Encroachments. There shall not be encroachments of structures, easements, rights-of-way, or land uses that do not conform to this administrative regulation and with the purposes and definition of a nature preserve or natural area as specified in KRS 146.410 to 146.530, except as allowed by the nature preserves articles of dedication or natural area management plan.

Section 4. Emergency Situations.

(1) An emergency situation shall be reported immediately to the office[director of the commission].

(2) An emergency situation that requires immediate action to prevent injury to persons or damage to property shall be handled in a manner that minimizes damage to natural conditions.

Section 5. Internal Access Lanes.

(1) An internal vehicular access lane shall be installed and maintained ~~within a nature preserve~~ only where essential for patrol, fire control, management, or research activities and shall be in accordance with the [preserve] management plan.

(2) An internal vehicular access lane shall:

(a) Be limited to service vehicles or, in an emergency situation, rescue vehicles; and

(b) Provide a single track not to exceed ten (10) feet in width.

Section 6. Fire Control.

(1) If a [boundary] firebreak is needed, it shall be constructed in a buffer area [outside the nature preserve] if possible.

(a) A firebreak [within a nature preserve] shall be kept to a minimum and shall be constructed only in accordance with the [preserve fire] management plan and prescribed fire plan.

(b) A temporary firebreak made by mowing, raking, blowing, wetting, or black lining may be used in conjunction with a prescribed[managed] burn.

(2)(a) A wildfire shall be brought under control as quickly as possible if there is imminent danger to lives or adjacent property.

(b) Fire lines on nature preserves shall be constructed with hand tools or mowing equipment rather than heavy equipment, to

minimize damage to the preserve.

(c) If there is no danger to lives or adjacent property and the fire can be contained at the [preserve] boundary, the office[commission] may assess the benefit of allowing a wildfire to burn and shall inform the entity having fire suppression responsibility of its decision to suppress a wildfire or to allow it to burn.

(d) There shall not be any cleanup, fire hazard reduction, or replanting after a fire within a nature preserve, except with the written approval of the office[commission]. Approval shall be based upon health and safety considerations or the need for habitat restoration.

(3) If undertaken, prescribed burning shall be conducted in accordance with a prescribed fire plan prepared for each burn unit, approved by the executive director, and in accordance with the [preserve] management plan. Prescribed burn plans shall be to current Kentucky Prescribed Fire Council Standards pursuant to KRS 149.175. Prescribed burn lines may be constructed with heavy equipment only if required for habitat restoration implementation under the management plan.

(4) During a prescribed burn:

(a) Fire shall be kept away from fences and other structures that may be damaged;

(b) Burning shall not be done under conditions more hazardous than specified in the prescribed burn plan;

(c) Firefighting chemicals that are known to cause damage to or alter a natural condition shall not be used; and

(d) The use of a vehicle or equipment shall:

1. Be specified in the prescribed burn plan; and

2. Not cause permanent damage or alteration to the natural features of a[the] nature preserve.

Section 7. Trails.

(1) A trail system shall conform to the objectives of the nature preserve or natural area. A trail shall:

(a) Be designed to affect only part of the property[nature preserve] and to have minimal impact on natural features; and

(b) Not have a significant impact on animals or plants monitored by the office[commission] or on archaeological resources located within the property[preserve].

(2) Location and form of a trail other than a natural wildlife path shall be approved or denied by the office[commission], in accordance with the [preserve] management plan.

(3) A trail shall be kept to a single file width sufficient to allow one (1) person to pass another but not wide enough to allow two or more people to walk abreast of one another and shall be adequate to provide for permitted use of a nature preserve and to prevent erosion, trampling of vegetation, and other deterioration. ~~["A wider trail may be constructed when the surrounding vegetation type, such as grasslands would require excessive maintenance to keep the trail open, or a wider preexisting path was established prior to designation as a nature preserve or natural area. These wider trails[and] shall be specified in the nature preserve management plan."]~~

(4) Trail construction.

(a) Use of paving materials, footbridges, or elevated walks is permissible if provided for in the trail plan section of the [preserve] management plan, but shall be kept to a minimum in order to limit damage ~~to the preserve~~.

(b) Synthetic materials, painted or chemically treated wood, or stone or earth materials from outside the property[nature preserve] shall not be used in trail construction unless specified in the [preserve] management plan.

(5) Animals or plants monitored by the office[commission] shall not be removed, damaged, or altered in trail construction or maintenance.

Section 8. Other Structures and Improvements.

(1) Necessary signs, information kiosks, trash receptacles, and minor structures required to house research instruments or hand tools shall be permitted within a nature preserve or natural area if specifically required in the [preserve] management plan or permitted by the office[commission] for [research] activities

consistent with KRS 146.200 to 146.619.

(2) Any other structure in a dedicated nature preserve shall be located in a service area.

(3) Any sign or structure shall be approved or denied by the office[commission], in accordance with the [preserve] management plan.

Section 9. Service Areas. Service areas may be established within a nature preserve to provide access and parking, management facilities, and visitor facilities. Provision for a necessary service area may be included in the articles of dedication or after a finding by the office[commission] that the designation is warranted and in accordance with the articles of dedication.

#### Section 10. Scenic and Landscape Management.

(1) Measures shall not be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness, or amenities of a nature preserve, except as established in this section and Sections 2, 5, and 7 through 9 of this administrative regulation. Cutting of grass, brush, or other vegetation, thinning of trees, removal of dead wood, opening of scenic vistas, or planting shall not be performed except after a finding by the office[commission] that the action does not irreparably harm the preserve and is in accordance with the [preserve] management plan.

(2) Installation of guard rails, fences, steps, and other devices necessary for visitor safety shall conform to the [preserve] management plan. Dead trees or branches that constitute a safety hazard to persons on trails or in other authorized use areas may be felled or cleared.

(3) Except as provided in the articles of dedication or as approved by the office[commission], there shall not be any removal, introduction or consumptive use of any material, product, or object from a nature preserve, except as established in this administrative regulation. The following activities shall be prohibited on dedicated nature preserves:

- (a) Grazing by domestic animals;
- (b) Farming;
- (c) Gathering of firewood;
- (d) Gathering of plant or mushroom products;
- (e) Mining, quarrying or mineral extraction, fossil or rock collection;
- (f) Dumping, burying or spreading of garbage, trash or other materials;
- (g) Logging; and
- (h) Any other human activity that results in damage to or loss of natural features of the preserve.

(4) An artifact on a nature preserve shall only be removed or demolished as follows:

- (a) An old interior fence may be removed. Prior to removal, its location shall be mapped, leaving posts to mark boundaries between former land uses; and
  - (b) Rubbish may be removed.
- (5) Structures lacking utilitarian, historical, scientific, or habitat value may be demolished or removed.

Section 11. Water Level Control. Natural water levels shall not be altered on nature preserves. Natural water levels on natural areas may be altered only if the office determines it is needed for habitat restoration to benefit monitored species or ecological communities and is part of the management plan. Water levels that have been altered by humans may be changed if identified as being essential for the maintenance or restoration of natural conditions.

Section 12. Erosion Control. Erosion and soil deposition due to past or present disturbance by humans or natural conditions within or outside of a nature preserve may be controlled as needed for the maintenance or restoration of natural conditions.

#### Section 13. Management of Animals and Plants.

(1) Control of plant succession.

(a) Control of plant succession by deliberate manipulation may be undertaken if preservation or restoration of a particular vegetation type or preservation of animals or plants monitored by the office[commission] is designated an objective of the nature preserve or natural area by the office[commission].

(b) If undertaken, plant succession control measures shall be undertaken as outlined in the [preserve] management plan to meet objectives referenced in Section 13(a) of this administrative regulation.

(c) Vegetation may be managed. If managed, the following limitations shall apply:

1. Plant species not native to the site or vicinity may be eliminated by cutting, girdling, grubbing, cut stump, or basal or foliar application of specified herbicide;

2. The time of burning during the year, the frequency of burning, and the fractional amount of the area that may be burned each year shall be specified; and

3. Invading native woody species may be eliminated or controlled by cutting, girdling, grubbing, cut stump, or basal or foliar application of specified herbicide.

(d) The use of herbicides shall be specified in the management plan for each nature preserve natural area.

(2) Control of noxious species.

(a) Plants or animals that are determined by the office to be noxious in fact shall be controlled only if they are documented as jeopardizing populations of plants and animals or the natural integrity of the nature preserve.

(b) Except for removal from a trail, access lane, or firebreak as authorized by this administrative regulation, there shall not be any control of a native plant that is not noxious but may otherwise appear undesirable.

(c) There shall not be any control of native predators, rodents, insects, snakes, or other animals, even though they may appear harmful or undesirable, unless they are documented as jeopardizing populations of native plants or animals, or the natural integrity of the nature preserve.

(d) There shall not be any use of a pesticide except as authorized in the [preserve] management plan.

(3) Control of exotic species.

(a) Control of exotic plants or animals may be undertaken. If control of exotic plants is undertaken, it shall be done in accordance with Section 13(1)(c) of this administrative regulation.

(b) If control of exotic animals is undertaken it shall be done in accordance with Section 13(2) of this administrative regulation.

(4) Any measure for population control of any species shall be established in the preserve management plan.

(5) Management of plants or animals monitored by the office[commission] and species of management concern.

(a) Habitat manipulations and protective measures in favor of particular species shall be undertaken only as approved by the office[commission]. Approval shall be based upon a finding by the office[commission] that describes the proposed activities and addresses species life history, habitat requirements of the species, characteristics and objectives of the preserve and other relevant information.

(b) Control of plant succession in favor of particular species shall be as provided in this administrative regulation.

(6) Introduction of plants and animals. Plants, animals, or their reproductive bodies shall not be brought into a nature preserve or moved from one (1) place to another within a preserve except with approval of the office[commission]. Approval shall be based upon scientific evidence documenting the species' historical occurrence in the ecosystem[on the preserve]. Restoration shall be performed with caution and based on a finding that the actions shall not adversely affect natural conditions on the nature preserve. Habitat or species restoration on undedicated natural areas shall conform to the management plan.

#### Section 14. Use Tolerance.

(1) Human use of a nature preserve or natural area shall be allowed only to the extent and in a manner that shall not impair natural conditions.

(2) The articles of dedication or management plan may specify

the controls and restrictions to be placed on access and use.

(3) The office[commission] as owner, or the landowner and the office[commission] upon agreement, may further restrict access and use as necessary to protect the nature preserve or natural area.

Section 15. Character of Visitor Activity.

(1) Visitor activity shall be regulated to prevent disturbance of a nature preserve or natural area beyond what it can tolerate without permanent deterioration. A visitor without a permit for research or educational activities shall be restricted to trails and areas open to off-trail use and may be otherwise restricted in movement. A person wishing to traverse a nature preserve or natural area elsewhere than on a trail or other area open to visitation shall obtain permission from the office[commission].

(2) Public use shall be in accordance with the articles of dedication of a nature[the] preserve or management plan of a natural area.

(3) Hunting, fishing, and trapping on a nature preserve shall not be allowed unless provided for in the articles of dedication for the nature preserve and shall be subject to 400 KAR Chapter 2. The office[commission] may approve hunting, fishing, trapping or other control methods if necessary to ensure that the preserve is protected from a documented imbalance of species or impending animal disease. Hunting, fishing, and trapping on a natural area shall not be allowed unless provided for in the management plan and shall be subject to the administrative regulations in this chapter.

(4) A visitor shall not bring an animal into a nature preserve, except for a service animal. A visitor shall not bring an animal into a natural area, except for a service animal, unless approved in the management plan.

(5) A visitor carrying a deadly weapon on a nature preserve or natural area shall not discharge the weapon unless it is necessary for either self-defense or ~~hunting if the visitor has previously obtained permission from the commission to hunt on the nature preserve or~~ hunting is provided for in the management plan, articles of dedication if any, and in accordance with this regulation.

(6) A nature preserve or natural area that is open to visitors shall be open sunrise to sunset.

(7) Trails shall be open to foot traffic only. Travel on horse, bicycle, or motorized vehicle shall be prohibited at all times.

(8) Rock climbing and rappelling shall be prohibited at all times.

(9) Possessing or using non-prescription drugs or alcohol shall be prohibited at all times.

(10) Camping, picnicking, building fires, using audio equipment (except if part of research approved by the office[commission]) shall be prohibited at all times on nature preserves and prohibited on natural areas unless approved in the management plan.

(11) Collecting plants, fungi, animals, minerals, rocks, wood or artifacts shall be prohibited at all times except for approved scientific studies in accordance with Section 19 of this administrative regulation.

Section 16. Access Control.

(1) Ingress and egress shall be allowed only at locations and under conditions as may be specified by the office[commission] in the [preserve] management plan.

(2) The owner, custodian, and office[commission] have the authority to further limit access as may be necessary for protection and proper management~~[of the nature preserve]~~.

Section 17. Orientation and Guidance of Visitors. Orientation and guidance of visitors shall be in accordance with the articles of dedication or management plan, and as approved by the office[commission]. Interpretive signs, structures or labels shall be of uniform appearance.

Section 18. Permission for Research, Group, or Educational Activities.

(1) A person wishing to engage in research, group, or educational activities on a nature preserve or natural area shall

secure prior permission of the office[commission]. If the activities are to be carried on by a group, permission may be issued to the group leader who shall be responsible for the actions of the group. Permission or denial shall be based upon information provided in the application for permission, the purpose stated for the research, and an assessment of any damage that may result from the activity.

(2) A permit[Permission] shall be required for educational, research, or group use of a nature preserve or natural area[only] if activities include collecting or activities other than walking and observation or if the preserve is not open to the public or if the group is larger than ten (10) individuals.

(3)(a) The application for a permit[permission] shall be on Natural Areas/Nature Preserves User Permit Application, KNP01 or Research Permit Application, KNP02[a form prescribed by the commission] and shall include the:

1. Name of the applicant;
2. Mailing address and electronic mailing address of the applicant;
3. Occupation of the applicant;
4. Professional qualifications of the applicant;
5. General field of interest of the applicant; and
6. Description of the applicant's proposed activities, including the:
  - a. Objectives, methods and procedures to be followed;
  - b. Records to be kept;
  - c. Location and duration of the project areas to be visited;
  - d. Frequency and length of visits; and
  - e. Detailed description of disturbances to be made ~~[to the preserve]~~.

(b) Information shall be provided on the:

1. Species or objects to be taken;
2. Number of specimens;
3. Method of taking; and
4. Disposition of specimens.

(c) The office[commission] shall provide permit[permission] application forms to persons requesting them.

(4)(a) The approved permit[permission] may contain specific provisions and restrictions.

(b) The permit[permission] may be modified, suspended, or revoked by the office[commission] for violations of the conditions of the permit[permission], this section, or based upon a determination of the office[commission] that the activity jeopardizes the nature preserve or natural area.

(c) Each holder of a permit[permission] shall submit to the office[commission] an annual report or progress report as directed in the permit.

(d) A permit[permission] for an activity of no more than the calendar year expires on December 31 of that year. A permit[permission] for an activity of longer than one (1) year may be extended annually upon submission of an annual report and request for an extension.

(e) A final report with results, including data collected in a format supplied by the office, shall be submitted at the conclusion of the research. This data may be incorporated by the office into a research clearinghouse and inventory database in accordance with KRS 146.485 and 400 KAR 2:080 Section 6.

Section 19. Collecting on Nature Preserves or Natural Area.

(1) A person wishing to collect a scientific specimen for deposition in a permanent institutional collection available to the public or for purposes of an approved research project shall do so pursuant to terms of permission as specified in this administrative regulation.

(2) Permission may restrict the collecting of certain species or specimens. Material for classroom laboratory observation or study shall not be collected. Exceptions may be provided in the articles of dedication of the nature preserve, or as set forth in the [preserve] management plan.

Section 20. Record.

(1) A record shall be kept for each nature preserve and natural area.

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(2) One (1) copy of the record required by subsection (1) of this section shall be held by the office[commission] at its Frankfort location[office].

(3) The record shall include~~[annual]~~ reports from[of] the custodian and all other pertinent documentary material, studies, reports, and descriptions of significant events.

(4) Responsibility for assembling the record shall be with the office[commission-director], in conjunction with any[the] custodian of a[the] nature preserve.

Section 21. Management Plan. Each nature preserve and natural area shall be managed in strict accordance with the most recent~~[approved]~~ management plan in compliance with the requirements of KRS 146.200 to 146.619, articles of dedication if any, and this chapter that sets forth the allowable activities to take place on the nature preserve or natural area as related to:

- (1) Natural community and rare species protection;
- (2) Resource restoration and enhancement;
- (3) Archeological and historical resource protection;
- (4) Staffing;
- (5) Security;
- (6) Safety;
- (7) Public access and interpretation;
- (8) Maintenance of the nature preserve or natural area;
- (9) Coordination of management activities with adjacent landowners and other federal and state resource protection agencies; and
- (10) Research and education.

Section 22. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Natural Areas/Nature Preserves User Permit Application, KNP01, July 2018~~["Collecting/Access Permit Application for Kentucky State Nature Preserves," October 2011]; and~~

(b) Research Permit Application, KNP02, July 2018~~["Research Permit Application for Kentucky State Nature Preserves," October 2011].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Kentucky[State] Nature Preserves 300 Sower Boulevard[Commission, 801 Schenkel Lane], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation sets forth procedures for the maintenance of nature preserves and natural areas, the limiting of disturbance to protect natural conditions, response to outside factors, and the management of animals and plants.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for the maintenance of nature preserves and natural areas, limiting of disturbance to protect natural conditions, response to outside factors, and management of animals and plants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation establishes the procedures for the maintenance of nature preserves and natural areas, limiting of disturbance to protect natural conditions, response to outside factors, and management of animals and plants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes authorize the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation assists in the administration of those statutes by establishing the procedures for the maintenance of nature preserves and natural areas, limiting of disturbance to protect natural conditions, response to outside factors, and management of animals and plants.

(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: SB 129 from the 2018 Legislative Session abolished the Nature Preserves Commission as part of the reorganization of the Energy and Environment Cabinet. The duties of the Nature Preserves Commission were given to the newly formed Office of Kentucky Nature Preserves. This amendment makes changes to the administrative regulation related to the passage of SB 129 regarding the management, use and protection of nature preserves and natural areas by the Office of Kentucky Nature Preserves.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the administrative regulation to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the state nature preserves and natural areas.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this amendment. The amendments simply make changes to conform with the reorganization amendments from SB 129 and clarify language regarding the management of natural areas.

(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 these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to

the entity associated with complying with this amendment. An efficiency benefit will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are related to the reorganization resulting from the passage of SB 129 as well as management plans for nature preserves and natural areas.

#### 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 Kentucky Nature Preserves will be impacted by this proposal and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 400 KAR 2:100. Hearings and appeals.

RELATES TO: KRS 146.465, 146.480, 146.495, Chapter 424  
STATUTORY AUTHORITY: KRS 146.475, 146.485, 146.530  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.475 and 146.485 require the office[commission] to establish rules for the protection of nature preserves. KRS 146.530 requires the

office[commission] to establish a procedure whereby orders and final determinations of the office[commission] may be appealed administratively. This administrative regulation sets forth the procedure to be followed by the office[commission] in conducting hearings on issues related to nature preserves.

Section 1. Applicability. The office may conduct a public hearing for any reason, including the following purposes~~[This administrative regulation shall apply to hearings conducted by the commission including the following purposes]:~~

(1) Determining whether there exists an imperative and unavoidable public necessity that justifies the taking of a nature preserve or natural area, or any part thereof, by another public body, or disposition of a nature preserve or natural area or any part thereof by the office[commission].

(2) Determining whether proposed amendments to the articles of dedication of a nature preserve will not permit an impairment, disturbance, use or development of the nature preserve that is inconsistent with the articles of dedication or the Act.

(3) Determining whether differences exist in the characteristics and conditions of a proposed nature preserve, or other reasons, that justify making an exception in the articles of dedication to the requirements of these administrative regulations.

(4) Determining the custodian of a nature preserve or natural area when the property[nature preserve] is owned by the office[commission] in fee simple.

Section 2. Notice of Public Hearings. Notice of public hearing shall be given by the office in accordance with KRS Chapter 424.

(1) The notice shall:

(a) State the time, place, and purpose of the public hearing;

(b) Be published not less than seven (7) nor more than twenty-one (21) days prior to the public hearing; or

(c) Be published in the county, or counties, in which the nature preserve or natural area is located, and for the state at large.

(2) The notice may:

(a) Be published more than once~~[as directed by the commission]~~;

(b) Set forth the address to which written comments on the purpose of the public hearing may be submitted, and the date by which those written comments shall be submitted.

#### Section 3. Public Hearings.

(1) The public hearing shall be conducted in accordance with paragraphs (a) through (e) of this subsection~~[the following manner]~~:

(a) The public hearing shall be held at a time and place to be set by the office[commission] ~~and may be held in conjunction with a regular meeting of the commission~~.

(b) Any interested person may appear at the public hearing and make an oral or written presentation regarding the purpose of the public hearing. The office[commission] may regulate the length, order, and excessive repetition of oral presentations.

(c) The director may make a presentation and recommendation for action to the office[commission] at the hearing.

(d) The office[commission] shall consider all written and oral presentations in making its determination.

(e) The office[commission], ~~through the chairman~~, shall issue a final determination within sixty (60) days of the public hearing. The determination shall set forth the findings of the office[commission] in reaching its determination.

~~(2)(a) The final determination of the commission shall be submitted to the secretary of the cabinet for the secretary's approval within five (5) days of its issuance.~~

~~(b)] Copies of the final determination shall be sent to any person who made a written or oral presentation at the public hearing[te the commission] and any other person who makes a request in writing to the office[commission] for a copy.~~

#### Section 4. Appeals.

(1) Any person who participated in the public hearing and considers himself aggrieved by the determination made by the office may file, in accordance with 400 KAR Chapter 1, a petition

alleging that the determination is contrary to law or fact and is injurious to him or her, the grounds and reasons therefor, and demand a hearing. Unless the cabinet considers the petition to be frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of the notice unless the person complained against waives in writing the twenty-one (21) day period. The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice.

(2)(a) All hearings, other than conferences, under this chapter shall be held before a hearing officer, duly qualified to practice law in the Commonwealth of Kentucky, who may be:

1. A full-time employee of the cabinet;
2. Serve by contract; or
3. Be paid on a per diem basis in the discretion of the cabinet.

(b) After the conclusion of the hearing, the hearing officer shall within thirty (30) days make to the secretary a report and recommended order that shall contain a finding of fact and a conclusion of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of his report and recommended order upon all parties of record and their attorney of record to the proceeding, and they shall be granted the right to file exceptions thereto within fourteen (14) days of service.

(c) Any party may submit a written response to exceptions within twenty-one (21) days of service of the report and recommended order. Exceptions and responses not timely filed shall be noted and made a part of the record but shall not be considered by the secretary in making a final order.

(d) The secretary shall consider the report, exceptions, and recommended order and decide the case. The secretary may designate a deputy to sign any or all final orders of the cabinet, whether the orders are the result of hearing or agreement. The decision shall be served by mail upon all parties and their attorney of record, as well as all parties under subsection 3(2) of this section, and shall be a final order of the cabinet.

(3) Any party to a hearing under this subsection may:

1. Be represented by counsel;
2. Make oral or written argument;
3. Offer testimony;
4. Cross-examine witnesses; or
5. Take any combination of these actions.

(4) The record of the hearing shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original. Any final determination of the commission may be appealed to the secretary of the cabinet.

(2) The appeal shall be taken by filing with the secretary of the cabinet exceptions to the final determination of the commission within fifteen (15) days of its issuance. The exceptions shall state specifically the grounds relied upon by the appellant.

(3)

(4) The hearing office shall recommend that the secretary[shall] approve the final determination of the office[commission] unless, based upon the findings set forth in the final determination or any exceptions thereto, the secretary finds:

(a) There is no imperative and unavoidable public necessity due to the existence of a viable alternative to the proposed granting or disposition of a nature preserve, or natural area, or any part thereof;

(b) The determination of the office[commission] is inconsistent with the articles of dedication or the Act; or

(c) The office[commission] acted without or in excess of its power. [(4) The secretary shall, within forty-five (45) days, approve the final determination of the commission, or notify the commission in writing of the secretary's refusal to approve the final determination and set forth the reasons therefor. Failure of the secretary to so act shall constitute approval of the commission's action.]

(5) Notice of the secretary's approval or disapproval shall be sent to all persons as provided for in Section 3(2) of this

administrative regulation.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedure to be followed by the office in conducting hearings on issues related to nature preserves also providing a protocol for appeals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide for hearings and appeals on issues relating to nature preserves or natural areas.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation provides for hearings and appeals on issues relating to nature preserves or natural areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes authorize the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation assists in the administration of those statutes by providing for hearings and appeals on issues relating to nature preserves or natural areas.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to hearings and appeals on issues relating to nature preserves or natural areas.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the state nature preserves and natural areas.



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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 definition administrative regulation does not involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current

expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 400 KAR 3:010. Definitions for 400 KAR Chapter 3.

RELATES TO: KRS 146.485, 146.610

STATUTORY AUTHORITY: KRS 146.485, 146.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610 authorizes the Office of Kentucky Nature Preserves ~~Kentucky State Nature Preserves Commission~~ to promulgate administrative regulations for identification and designation of state threatened and endangered plant species. This administrative regulation establishes definitions for these provisions.

#### Section 1. Definitions.

(1) "Candidate" means a plant species that appears to be rare in the state, and for which substantive evidence as to its status is not available, and has not yet been included on the state endangered or threatened lists.

(2) "Office" ~~"Commission"~~ is defined by ia KRS 146.605(1).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines certain essential terms used in 400 KAR 3:020 through 400 KAR 3:040.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms to be used in 400 KAR Chapter 3.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation defines terms that are essential to correctly interpreting the administrative regulations in 400 KAR Chapter 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes authorizes the office to maintain a state registry of natural areas, an inventory of natural types, flora, and fauna, and other records of natural areas and nature preserves within the Commonwealth. This

administrative regulation assists in the administration of those statutes by defining essential terms for the correct interpretation of the administrative regulations in this chapter.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the definition to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners with threatened and endangered plants on their property. It is difficult to provide an accurate number of those impacted landowners as the plants could be encountered anywhere in the 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: No action will need to be taken to comply with this amendment. The amendments simply makes definitional changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 definition administrative regulation does not involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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

Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 400 KAR 3:020. Criteria for identifying and designating endangered or threatened species of plants.

RELATES TO: KRS 146.485, 146.610, 50 C.F.R. 17.12, 23.23

STATUTORY AUTHORITY: KRS 146.485, 146.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610(2)(a) and (b) authorizes the Office of Kentucky Nature Preserves~~[Kentucky State Nature Preserves Commission]~~ to promulgate administrative regulations for the identification and designation of state threatened or endangered plant species. This administrative regulation establishes the requirements for identifying and designating threatened or endangered plants.

Section 1. In addition to the factors established in KRS 146.610(2)(a), the office~~[commission]~~ shall utilize the~~[following]~~ criteria in subsections (1) through (3) of this section in its identification and designation of additional species:

(1) Only species that have been described and named in a refereed professional scientific journal and determined by the office to be widely accepted among professional botanists shall be considered;

(2) Hybrids shall not be listed unless they are known to be naturally reproducing; and

(3) Only plant species native to Kentucky shall be considered.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for identifying and designating threatened or endangered plants.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for identifying and designating threatened or endangered plants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation establishes the requirements for identifying and designating threatened or endangered plants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes authorize the office to conduct investigations, with the permission of the landowner, on any species of plants indigenous to the Commonwealth necessary to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data, and to determine protective measures and requirements necessary for its survival. This administrative regulation establishes the requirements for identifying and designating threatened or endangered plants.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to authorizing statutes related to the passage of SB 129.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners with threatened and endangered plants on their property. It is difficult to provide an accurate number of those impacted landowners as the plants could be encountered anywhere in the 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: No action will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB

129.

(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 these amendments. The information is essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 definition administrative regulation does not involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

## 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET  
Office of Kentucky Nature Preserves  
(Amendment)

**400 KAR 3:030. Procedures for inclusion, removal or change of status of plant species on the state endangered or threatened list.**

RELATES TO: KRS 146.485, 146.610

STATUTORY AUTHORITY: KRS 146.485, 146.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610 authorizes the Office of Kentucky Nature Preserves~~[Kentucky State Nature Preserves Commission]~~ to promulgate administrative regulations for the identification and designation of state threatened and endangered plant species. This administrative regulation establishes procedures for nomination and inclusion of plant species to these lists.

Section 1. Candidate Nomination.

(1) Any person may nominate a candidate for inclusion, removal, or change of status on the state endangered or threatened list.

(2) The nomination shall be in writing and~~[shall be]~~ submitted to the Director of the office, 300 Sower Boulevard~~[Kentucky State Nature Preserves Commission, 801 Schenkel Lane]~~, Frankfort, Kentucky 40601.

(3) Prior to consideration for inclusion on a list, a candidate shall be established as occurring in the state by a voucher specimen deposited in a public herbarium or photographic documentation that has been confirmed by the office~~[a botanical authority on this plant]~~, and accompanied by:

(a) Written documentation as to the specific location of the collection site;~~[.]~~

(b) Date of collection;~~[.]~~

(c) Description of the habitat and population size.

(4) The office~~[commission]~~ may consult with the Kentucky Academy of Science and other experts regarding the status of listed and candidate plant species.

Section 2. Consideration of Candidate.

(1) If the requirements of Section 1 of this administrative regulation have been satisfied, the office~~[commission]~~ shall, utilizing the factors set forth in KRS 146.610(2)(a) and the criteria set forth in 400 KAR 3:020, Section 1~~[3]~~, consider the candidate for inclusion, removal or change of status on the state endangered or threatened list.

(2) The office~~[commission]~~ may conduct its own investigation as to the status of the candidate.

(3) The office~~[commission]~~ may place a candidate into a category for which it is nominated, a category other than the one (1) for which it has been nominated or may decline to place the candidate on any list.

(4) The office~~[commission]~~ shall notify the person who nominated the candidate of the office's~~[commission's]~~ decision on the listing of the species.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Office of Kentucky Nature Preserves is authorized to promulgate administrative regulations for the identification and designation of state threatened and endangered plant species. This administrative regulation establishes procedures for nomination and inclusion of plant species to these lists.

(b) The necessity of this administrative regulation: This administrative regulation establishes procedures for nomination and inclusion of plant species to state threatened and endangered plant species lists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes procedures for nomination and inclusion of plant species to state threatened and endangered plant species lists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation establishes procedures for nomination and inclusion of plant species to state threatened and endangered plant species lists.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to authorizing statutes related to the passage of SB 129.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners with threatened and endangered plants on their property. It is difficult to provide an accurate number of those impacted landowners as the plants could be encountered anywhere in the 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: No action will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the

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entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

## 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

## ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

### 400 KAR 3:040. Endangered or threatened plant lists.

RELATES TO: KRS 146.485, 146.610

STATUTORY AUTHORITY: KRS 146.485, 146.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.610(2)(a) and (b) authorizes the Office of Kentucky Nature Preserves[Kentucky State Nature Preserves Commission] to promulgate administrative regulations for the identification and

designation of state threatened or endangered plant species. This administrative regulation establishes the lists of threatened or endangered plant species.

Section 1. Endangered Lists. The following plant species based on the factors in KRS 146.610(2)(a) and 400 KAR 3:020, Section 1, shall be considered endangered in the Commonwealth of Kentucky:

Scientific Name	Common Name
Vascular Plants	
<i>Acer spicatum</i>	Mountain maple
<i>Adlumia fungosa</i>	Climbing fumitory
<i>Agalinis auriculata</i>	Earleaf False Foxglove[agalinis]
<i>Agalinis obtusifolia</i>	Ten-lobed False Foxglove[agalinis]
<i>[Agalinis skinneriana]</i>	[Pale false foxglove]
<i>[Amsonia tabernaemontana var. gattingeri]</i>	[Eastern blue-star]
<i>Angelica atropurpurea</i>	Great angelica
<i>Angelica triquinata</i>	Filmy angelica
<i>Apios priceana</i>	Price's potato-bean
<i>Aralia nudicaulis</i>	Wild Sarsaparilla
<i>Berberis Canadensis</i>	American barberry
<i>Bolboschoenus fluviatilis</i>	River bulrush
<i>Botrychium matricariifolium</i>	Matricary grapefern
<i>Calamagrostis porteri</i> ssp. <i>insperata</i>	Reed bent grass
<i>Calamovilfa arcuata</i>	Cumberland sandgrass
<i>Calopogon tuberosus</i>	Grasspink
<i>Carex aestivalis</i>	Summer sedge
<i>Carex atlantica</i> ssp. <i>capillacea</i>	Prickly bog sedge
<i>Carex joorii</i>	Cypress-swamp sedge
<i>Carex juniperorum</i>	Cedar sedge
<i>Carex leptoneura</i>	Finely-nerved sedge
<i>Carex reniformis</i>	Reniform sedge
<i>Carex roanensis</i>	Roan mountain sedge
<i>Carex tetanica</i>	Rigid sedge
<i>Castanea dentata</i>	American chestnut
<i>Castilleja coccinea</i>	Scarlet indian paintbrush
<i>Cheilanthes feei</i>	Fee's lip fern
<i>Chelone obliqua</i> var. <i>obliqua</i>	Red turtlehead
<i>Chrysogonum virginianum</i>	Green-and-gold
<i>Collinsonia verticillata</i>	Whorled horse-balm
<i>Comptonia peregrina</i>	Sweet-fern
<i>Conradina verticillata</i>	Cumberland-rosemary
<i>Convallaria montana</i>	American lily-of-the-valley
<i>Coralorrhiza maculata</i>	Spotted coralroot
<i>Cymophyllus fraserianus</i>	Fraser's sedge
<i>Cypripedium candidum</i>	Small white lady's-slipper
<i>Cypripedium kentuckiense</i>	Kentucky lady's-slipper
<i>Deschampsia cespitosa</i>	Tufted hair grass
<i>Draba cuneifolia</i>	Wedge-leaf whitlow-grass
<i>Drosera brevifolia</i>	Dwarf sundew
<i>Drosera intermedia</i>	Spoon-leaved sundew
<i>Echinodorus parvulus</i>	Dwarf burhead
<i>Eriophorum virginicum</i>	Tawny cotton-grass
<i>Eryngium integrifolium</i>	Blue-flower coyote-thistle
<i>Eupatorium semiserratum</i>	Small-flowered thoroughwort
<i>Eurybia hemisphericus</i>	Southern prairie aster
<i>Eurybia radula</i>	Low rough aster
<i>Gentiana flavida</i>	Yellow gentian
<i>Gentiana puberulenta</i>	Prairie gentian
<i>Glyceria acutiflora</i>	Sharp-scaled manna-grass
<i>Goodyera repens</i>	Lesser rattlesnake-plantain
<i>Gymnopogon brevifolius</i>	Shortleaf skeleton grass
<i>Halesia tetraptera</i>	Common silverbell
<i>Helianthemum bicknellii</i>	Plains frostweed
<i>Helianthemum canadense</i>	Canada frostweed
<i>Helianthus silphoides</i>	Silphium sunflower
<i>Hexastylis contracta</i>	Southern heartleaf
<i>Houstonia serpyllifolia</i>	Michaux's bluets



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<i>Hydrocotyle americana</i>	American water-pennywort
<i>Hydrocotyle ranunculoides</i>	Floating pennywort
<i>Hydrolea ovata</i>	Ovate fiddleleaf
<i>Iris fulva</i>	Copper iris
<i>Isoetes butleri</i>	Butler's quillwort
<i>Isoetes melanopoda</i>	Blackfoot quillwort
<i>Koeleria macrantha</i>	June grass
<i>Krigia occidentalis</i>	Western dwarf dandelion
<i>Leavenworthia exigua</i> var. <i>laciniata</i>	Kentucky gladeceess
<i>Lesquerella globosa</i>	Globe bladderpod
<i>Leucothoe recurva</i>	Fetterbush
<i>Lobelia gattingeri</i>	Gattinger's lobelia
<i>Lonicera dioica</i> var. <i>orientalis</i>	Wild honeysuckle
<i>Lonicera prolifera</i>	Grape honeysuckle
<i>Ludwigia hirtella</i>	Hairy ludwigia
<i>Lycopodiella appressa</i>	Southern bog club-moss
<i>Lycopodiella inundatum</i>	Northern bog club-moss
<i>Lycopodium clavatum</i>	Running-pine
<i>Lysimachia terrestris</i>	Swamp-candles
<i>Maianthemum stellatum</i>	Starflower false solomon's-seal
<i>Marshallia grandiflora</i>	Large-flowered barbara's-buttons
<i>Matelea carolinensis</i>	Carolina anglepod
<i>Melampyrum lineare</i> var. <i>pectinatum</i>	American cowwheat
<i>Melanthium virginicum</i>	Virginia bunchflower
<i>Minuartia cumberlandensis</i>	Cumberland sandwort
<i>Muhlenbergia bushii</i>	Bush's muhly
<i>Nestronia umbellula</i>	Conjurer's-nut
<i>Oenothera linifolia</i>	Thread-leaf sundrops
<i>Oenothera perennis</i>	Small sundrops
<i>Oldenlandia uniflora</i>	Clustered bluets
<i>Onosmodium hispidissimum</i>	Hairy false gromwell
<i>Onosmodium occidentale</i>	Western false gromwell
<i>Parnassia asarifolia</i>	Kidney-leaf grass-of-parnassus
<i>Parnassia grandifolia</i>	Largeleaf grass-of-parnassus
<i>Paronychia argyrocoma</i>	Silverling
<i>Philadelphus pubescens</i>	Hoary mockorange
<i>Phlox bifida</i> ssp. <i>stellaria</i>	Starry-cleft phlox
<i>Platanthera integrilabia</i>	White fringeless orchid
<i>Platanthera psycodes</i>	Small purple-fringed orchid
<i>Poa saltuensis</i>	Drooping blue grass
<i>Pogonia ophioglossoides</i>	Rose pogonia
<i>Polygala cruciata</i>	Cross-leaf milkwort
<i>Polygala paucifolia</i>	Gaywings
<i>Polymnia laevigata</i>	Tennessee leafcup
<i>Potamogeton amplifolius</i>	Bigleaf pondweed
<i>Prenanthes alba</i>	White rattlesnake-root
<i>Prenanthes aspera</i>	Rough rattlesnake-root
<i>Prenanthes barbata</i>	Barbed rattlesnake-root
<i>Ptilimnium nuttallii</i>	Nuttall's mock bishop's-weed
<i>Pycnanthemum albescens</i>	White-leaved mountain-mint
<i>Rhododendron canescens</i>	Hoary azalea
<i>Rhynchosia tomentosa</i>	Hairy snout-bean
<i>Rhynchospora macrostachya</i>	Tall beakrush
<i>Rubus canadensis</i>	Smooth blackberry
<i>Rudbeckia subtomentosa</i>	Sweet coneflower
<i>Sabatia campanulata</i>	Slender marsh-pink
<i>Sagittaria rigida</i>	Sessile-fruit arrowhead
<i>Salvia urticifolia</i>	Nettle-leaf sage
<i>Sambucus racemosa</i> ssp. <i>pubens</i>	Red elderberry
<i>Sanguisorba canadensis</i>	Canada burnet
<i>Saxifraga micranthidifolia</i>	Lettuce-leaf saxifrage
<i>Schisandra glabra</i>	Bay starvine
<i>Schoenoplectis hallii</i>	Hall's bulrush
<i>Scirpus expansus</i>	Woodland bulrush
<i>Scleria ciliata</i>	Fringed nut-rush
<i>Scutellaria arguta</i>	Hairy skullcap

<i>Silene ovata</i>	Ovate catchfly
<i>Silene regia</i>	Royal catchfly
<i>Solidago shortii</i>	Short's goldenrod
<i>Sparganium eurycarpum</i>	Large bur-reed
<i>Spiraea alba</i>	Narrow-leaved meadowsweet
<i>Spiranthes odorata</i>	Sweetscent ladies'-tresses
<i>Sporobolus heterolepis</i>	Northern dropseed
<i>Symphoricarpos albus</i>	Snowberry
<i>Talinum calcaricum</i>	Limestone fameflower
<i>Talinum teretifolium</i>	Roundleaf fameflower
<i>Tephrosia spicata</i>	Spiked hoary-pea
<i>Thermopsis mollis</i>	Soft-haired thermopsis
<i>Toxicodendron vernix</i>	Poison sumac
<i>Tragia urticifolia</i>	Nettle-leaf noseburn
<i>Trichophorum planifolium</i>	Bashful bulrush
<i>Trichostema setaceum</i>	Narrow-leaved bluecurls
<i>Trientalis borealis</i>	Northern starflower
<i>Trifolium reflexum</i>	Buffalo clover
<i>Trillium nivale</i>	Snow trillium
<i>Trillium pusillum</i>	Least trillium
<i>Utricularia macrorhiza</i>	Greater bladderwort
<i>Vaccinium erythrocarpum</i>	Highbush cranberry
<i>Veratrum parviflorum</i>	Small-flowered false hellebore
<i>Viburnum latanoides</i>	Alderleaf viburnum
<i>Viburnum nudum</i>	Possum haw viburnum
<i>Xyris difformis</i>	Carolina yellow-eye-grass
Mosses	
<i>Brachythecium populeum</i>	Matted feather moss
<i>Bryum cyclophyllum</i>	A moss
<i>Bryum miniatum</i>	A moss
<i>Dicranodontium asperulum</i>	A moss
<i>Entodon brevisetus</i>	A moss
<i>Herzogiella turfacea</i>	A moss
<i>Oncophorus raii</i>	A moss
<i>Orthotrichum diaphanum</i>	A moss
<i>Polytrichum strictum</i>	A haircap moss
<i>Sphagnum quinquefarium</i>	A sphagnum moss
<i>Tortula norvegica</i>	Tortula

Section 2. Threatened Lists. The following plant species, based on the factors in KRS 146.610(2)(a) and the criteria listed in 400 KAR 3:020, Section 1, shall be considered threatened in the Commonwealth of Kentucky:

Scientific Name	Common Name
<i>Aconitum uncinatum</i>	Blue monkshood
<i>Adiantum capillus-veneris</i>	Southern maidenhair-fern
<i>Aesculus pavia</i>	Red buckeye
<i>Agrimonia gryposepala</i>	Tall hairy groovebur
<i>Amianthium muscitoxicum</i>	Fly-poison
<i>Arabis hirsuta</i>	Hairy rockcress
<i>Arabis perstellata</i>	Braun's rockcress
<i>Armoracia lacustris</i>	Lake cress
<i>Baptisia tinctoria</i>	Yellow wild indigo
<i>Bartonia virginica</i>	Yellow screwstem
<i>Berchemia scandens</i>	Supplejack
<i>Boykinia aconitifolia</i>	Brook saxifrage
<i>Cabomba caroliniana</i>	Carolina fanwort
<i>Calamagrostis porteri</i> ssp. <i>porteri</i>	Porter's reed grass
<i>Calycanthus floridus</i> var. <i>glauca</i>	Sweetshrub
<i>Carex alata</i>	Broadwing sedge
<i>Carex appalachica</i>	Appalachian sedge
<i>Carex crebriflora</i>	Coastal plain sedge
<i>Carex decomposita</i>	Epiphytic sedge
<i>Carex gigantea</i>	Large sedge
<i>Carex rugosperma</i>	Umbel-like sedge
<i>Carex straminea</i>	Straw sedge
<i>Carya aquatica</i>	Water hickory
<i>Carya caroliniae-septentrionalis</i>	Southern shagbark hickory
<i>Castanea pumila</i>	Allegheny chinkapin



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Ceanothus herbaceus	Prairie redroot
Chrysosplenium americanum	American golden-saxifrage
Cimicifuga rubifolia	Appalachian bugbane
Clematis crispa	Blue jasmine leather-flower
Cypripedium parviflorum var. parviflorum	Small yellow lady's-slipper
Delphinium carolinianum	Carolina larkspur
Deschampsia flexuosa	Crinkled hair grass
Echinodorus berteroi	Burhead
Elodea nuttallii	Waterweed
Eupatorium steelei	Steele's joe-pye-weed
Euphorbia mercurialina	Mercury spurge
Eurybia saxicastellii	Rockcastle aster
Fimbristylis puberula	Hairy fimbriatylis
Forestiera ligustrina	Upland privet
Gratiola pilosa	Shaggy hedge-hyssop
Hedeoma hispidum	Rough pennyroyal
Helianthus eggertii	Eggert's sunflower
Heterotheca subaxillaris var. latifolia	Broad-leaf golden-aster
Hieracium longipilum	Hairy hawkweed
Hydrophyllum virginianum	Eastern waterleaf
Hypericum crux-andreae	St. Peter's-wort
Juncus filipendulus	Long-styled rush
Juniperus communis var. depressa	Ground juniper
Lathyrus palustris	Vetchling peavine
Leavenworthia torulosa	Necklace glade cress
Liatris cylindracea	Slender blazingstar
Lilium philadelphicum	Wood lily
Lilium superbum	Turk's cap lily
Limnium spongia	American frog's-bit
Liparis loeselii	Loesel's twayblade
Listera smallii	Kidney-leaf twayblade
Lobelia nuttallii	Nuttall's lobelia
Maianthemum canadense	Wild lily-of-the-valley
Malvastrum hispidum	Hispid false mallow
Melampyrum lineare var. pectinatum	American cowwheat
Minuartia glabra	Appalachian sandwort
Monotropsis odorata	Sweet pinesap
Muhlenbergia cuspidata	Plains muhly
Nemophila aphylla	Small-flower baby-blue-eyes
Oclemena acuminata	Whorled aster
Oenothera triloba	Stemless evening-primrose
Orontium aquaticum	Goldenclub
Paxistima canbyi	Canby's mountain-lover
Perideridia americana	Eastern eulophus
Philadelphus inodorus	Mock orange
Phlox bifida ssp. bifida	Cleft phlox
Platanthera cristata	Yellow-crested orchid
Polygala polygama	Racemed milkwort
Pontederia cordata	Pickerel-weed
Potamogeton pulcher	Spotted pondweed
Prenanthes crepidinea	Nodding rattlesnake-root
Ptilimnium capillaceum	Mock bishop's-weed
Quercus nigra	Water oak
Quercus texana	Nuttall's oak
Sagina fontinalis	Water stitchwort
Sagittaria graminea	Grass-leaf arrowhead
Sagittaria platphylla	Delta arrowhead
Saxifraga michauxii	Michaux's saxifrage
Schizachne purpurascens	Purple-oat
Scutellaria saxatilis	Rock skullcap
Sedum telephoides	Allegheny stonecrop
Silphium laciniatum	Compassplant
Solidago albopilosa	White-haired goldenrod
Solidago curtisii	Curtis' goldenrod
Solidago roanensis	Roan mountain goldenrod

Spiraea virginiana	Virginia spiraea
Spiranthes lucida	Shining ladies'-tresses
Spiranthes magnicamporum	Great plains ladies'-tresses
Spiranthes ochroleuca	Yellow nodding ladies'-tresses
Sporobolus clandestinus	Rough dropseed
Stenanthium gramineum	Eastern featherbells
Symphyotrichum concolor	Eastern silvery aster
Symphyotrichum priceae	White heath aster
Taxus canadensis	Canadian yew
Thaspium pinnatifidum	Cutleaf meadow-parsnip
Thuja occidentalis	Northern white-cedar
Trifolium stoloniferum	Running buffalo clover
Trillium undulatum	Painted trillium
Veratrum woodii	Wood's bunchflower
Viburnum molle	Missouri arrow-wood
Viburnum rafinesquianum var. rafinesquianum	Downey arrow-wood
Viola walteri	Walter's violet
Vitis rupestris	Sand grape
Zizaniopsis miliacea	Southern wild rice
Mosses	
Abietinella abietina	Wire fern moss
Anomodon rugelii	A moss
Cirriophyllum piliferum	A moss
Neckera pennata	A moss

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the lists of threatened or endangered plant species.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the lists of threatened or endangered plant species.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation establishes the lists of threatened or endangered plant species.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 146.485 authorizes the office to develop administrative regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves. This administrative regulation is

necessary to establish the lists of threatened or endangered plant species.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to authorizing statutes related to the passage of SB 129.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners with threatened and endangered plants on their property. It is difficult to provide an accurate number of those impacted landowners as the plants could be encountered anywhere in the 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: No action will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local

governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 400 KAR 4:110. Definitions for 400 KAR Chapter 1[4:120 to 4:140].

RELATES TO: KRS 146.220, 146.241, 146.250, 146.260, 146.270, 146.290, 146.310, 146.350, 146.360

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. Emphasis shall be given to protecting aesthetic, scenic, ecological, historic, archaeological and scientific features of the areas. This administrative regulation defines certain essential terms used in the wild rivers administrative regulations, 400 KAR Chapter 1[401-KAR 4:120 to 4:140], which are not clearly defined by their context.[Terms not defined below have the meaning given to them in relevant statutes or, if not defined in statutes, the meaning attributed by common use.]

Section 1. (1) "Access road" means that access constructed or improved to connect a permitted use within a wild river corridor to a public road system.

(2) "Acid-forming substance" means an earth substance that contains sulfide minerals or other materials which, if exposed to air, water, or weathering processes, forms acids that may create acid water.

(3) "Acid water" means drainage with a pH of less than six (6.0) in which total acidity exceeds total alkalinity.

(4) "Adverse impact" means having a damaging, degrading or destructive effect on a resource.

(5) "Agricultural use" means the use of land for agricultural purposes including, but not limited to farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry; provided that fruit, vegetable, and flower production for personal use is not deemed agricultural use.

(6) "Applicant" means the landowner who applies for a change of use permit to allow a change of land use within a wild river corridor.

(7) "Best management practices" means methods, measures or practices to prevent or reduce water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures which may be applied before, during or after pollution-producing activities to reduce or eliminate the introduction of pollutants into waterbodies.

(8) "Buffer zone" means an area of natural vegetation having a minimum width of not less than 100 feet, which is retained along each bank of a wild river to maintain aesthetics, bank stability, appropriate water temperatures, fish and wildlife habitat, and stream hydraulics, and to filter debris and waterborne pollutants from surface run-off.

(9) "Cabinet" means the Energy and Environment [Environmental and Public Protection] Cabinet.

(10) "Change of use permit" means a permit issued to a landowner by the office[secretary] to authorize a change of land use within a wild river corridor.

(11) "Commercial service" means the use of a wild river corridor for monetary profit, including, but not limited to, concessions, boat rentals, shuttle services, guided trips or tours, commercial boat docks, wharves and other recreational facilities.

(12) "Conforming land use" means a land or resource use which conforms to the provisions and intent of the Kentucky Wild River Act and the management plan developed pursuant to KRS 146.270 for a given wild river corridor.

(13) "Cultural character" means the condition, composition, and/or appearance of an archaeological or historical feature which contributes to its outstanding, unique or otherwise significant value.

(14) "Disturbed area" means an area having a manmade surface disturbance.

(15) "~~Division~~" means the Division of Water.

(16) "~~Existing use~~" means a land use which is in existence at the time a wild river is designated by the Kentucky General Assembly.

(17) "~~(17)~~" "Flood plain" means the area in a watershed that is subject to flooding at least one (1) time in every 100 years.

(18) "~~(18)~~" "Kentucky Wild Rivers Act" means KRS 146.200 to 146.360, as amended.

(19) "~~(19)~~" "Landowner" means the owner of a property or an interest in a property conveyed by lease or other legal conveyance.

(20) "~~(20)~~" "Land use plan" means a plan of action submitted to the office[cabinet] as part of a change of use permit application.

(21) "~~(21)~~" "Log landing" means a collecting point for holding cut timber.

(22) "~~(22)~~" "Management plan" means the individual plan adopted by the office[cabinet] pursuant to KRS 146.270 as the official document guiding the management and protection of a given wild river corridor.

(23) "~~(23)~~" "Natural character" means the condition or appearance of an area or resources which may be expected to exist in nature undisturbed by human actions.

(24) "~~(24)~~" "Natural vegetation" means the species, or combinations of species, of plants which exist, or may be expected to exist, in nature undisturbed by human actions.

(25) "~~(25)~~" "New land use" means a land use within a wild river corridor which is not in existence at the time a given wild river corridor is designated by the Kentucky General Assembly.

(26) "~~Office~~" is defined by KRS 146.210(8).

(27) "Operator" means the person, partnership, contractor, subcontractor, company or corporation responsible for the construction, maintenance, operation and reclamation of a permitted use.

(28) "Permitted use" means a nonconforming land use within a wild river corridor which has been authorized by the office[secretary] through the issuance of a change of use permit.

(29) "Permittee" means a landowner who has obtained a change of use permit from the office[cabinet].

(30) "Produced water" means water and pollutants and combination thereof resulting, obtained or produced from the exploration, drilling or production of oil or gas.

(31) "Professional forester" means a person holding a degree in forestry from a school with an accredited forestry program.

(32) "Research plan" means a plan of action submitted to the office[cabinet] for approval prior to initiating a scientific study within

a given wild river corridor.

(33) "Resource removal" means exploration for, extraction or removal of a natural resource including, but not limited to, coal, oil and gas, minerals, rock, gravel, sand and soil.

(34) "Secretary" means the Secretary of the Energy and Environment [Environmental and Public Protection] Cabinet.

(35) "Selective cutting (of timber)" means the selective removal during one (1) entry of single trees from an area such that a specified minimum residual stocking level is retained and evenly distributed over the harvest area. The purpose of the cut is to create or maintain an uneven-aged stand of timber.

(36) "Significant feature" means an outstanding, unique, rare or otherwise significant aesthetic, scenic, botanical, zoological, geological, historical, archaeological, scientific or recreational feature which is identified in the management plan or by the management agency as occurring within a given wild river corridor.

(37) "Skid" means to transport logs by sliding or dragging along the ground.

(38) "Skid trail" means a trail developed for the purpose of skidding logs from the stump to a log landing area.

(39) "Slash" means the residue left after the economically usable portion of cut trees is removed from a harvest area.

(40) "Structure" means an aboveground object constructed, built or installed for a change of use, and shall exclude sediment ponds, roads and signs.

(41) "Surface disturbance" means any disturbance of the ground surface which involves the clearing of vegetation or excavation of soil, rock or other materials occurring on or near the ground surface.

(42) "Surface mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, construction, or other use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(43) "Toxin-forming substance" means earth materials or wastes which, if exposed to air, water, weathering, or microbiological processes, are likely to produce conditions that are detrimental to biota or uses of water.

(44) "Underground mining" means those aspects of deep mining, including surface effects, involving any open pit or any underground workings from which minerals, ores or other solid matter is removed for sale, exchange, commercial, or other use, and all shafts, drifts, or inclines leading thereto, including all buildings and equipment, above or below the surface of the ground, used in connection with such workings.

(45) "Visual intrusion" means resulting in the disruption, degradation or impairment of the natural or primitive appearance of an area in a wild river corridor, as viewed from the river or other designated public use area, and includes any land use that does not remain visually subordinate to the characteristic landscape.

(46) "Watershed" means that area enclosed by a topographic divide from which direct surface run-off from precipitation normally drains by gravity into the stream above a specified point.

(47) "Wild river" or "wild river corridor" means a stream segment and adjacent shoreland within boundaries set forth in 400[404] KAR 4:100 which are designated in accordance with KRS 146.241.

(48) "Wild rivers system" means the collective wild rivers as designated in KRS 146.241 and amendments.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by

that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines essential terms used in the wild rivers administrative regulations, 400 KAR 4:100 through 4:140.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define essential terms used in the wild rivers administrative regulations, 400 KAR 4:100 through 4:140. It also provides corrections for previous incorrect KAR references.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.200 to 146.360 establishes a Wild Rivers System. This administrative regulation conforms to the content of the authorizing statutes by defining terms for the Wild Rivers program which was authorized by KRS 146.200 to 146.360.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 146.270 authorizes the office to develop administrative regulations necessary for the preservation and enhancement of the stream areas as set forth in KRS 146.250.

(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 makes changes to terms in the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the definitions to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners that have a wild rivers corridor on their property.

(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 will need to be taken to comply with this amendment. The amendments simply makes definitional changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name and other conforming changes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency benefit will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 definition administrative regulation does not involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted by this proposal and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

##### 400 KAR 4:125. Wild rivers administration.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.310, 146.350, 224.01-110, 224.10-240, 224.10-440, 224.10-470

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. KRS 146.220 places emphasis on protecting the aesthetic, scenic, historical, archaeological, ecological and scientific features of these areas. This administrative regulation sets forth guidelines for the administration, management and public use of wild river corridors, including criteria for delineating existing, conforming, permitted and prohibited land uses and conditions of authorization for utility right-of-way construction. This administrative regulation shall apply to all lands and waters under state jurisdiction which are located within designated wild river boundaries as set forth in 400[404] KAR 4:100. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.[This administrative regulation contains the substance of and repeals 401 KAR 4:120.]

Section 1.[Definitions. As used in this chapter, unless context otherwise requires:

(1) "Agricultural use" means the use of land for agricultural purposes including, but not limited to farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry; provided that fruit, vegetable and flower production for personal consumption shall not be deemed an agricultural use.

(2) "Buffer zone" means an area of woodland having a minimum width of not less than 100 feet which is retained along each bank of a wild river to maintain aesthetics, bank stability, appropriate water temperatures, fish and wildlife habitat, and stream hydraulics, and to filter debris and waterborne pollutants from surface run-off.

(3) "Cabinet" means the Environmental and Public Protection Cabinet.

(4) "Change of use permit" means a permit issued to a landowner by the secretary to authorize a change of land use within a wild river corridor.

(5) "Commercial service" means the use of a wild river corridor for monetary profit, including, but not limited to, concessions, boat rentals, shuttle services, guided trips or tours, commercial boat docks, wharves and other recreational facilities.

(6) "Conforming use" means a land or resource use which conforms to the provisions and intent of the Kentucky Wild Rivers Act and the management plan developed pursuant to KRS 146.270 for a given wild river corridor.

(7) "Existing use" means a land use which is in existence at the time a wild river is designated by the Kentucky General Assembly.

(8) "Floodplain" means the area in a watershed that is subject to flooding at least one (1) time in every 100 years.

(9) "Management plan" means the individual plan adopted by the cabinet pursuant to KRS 146.270 as the official document guiding the management and protection of a given wild river corridor.

(10) "Permitted use" means a nonconforming land use within a wild river corridor which has been authorized by the secretary through the issuance of a change of use permit.

(11) "Research plan" means a plan of action submitted to the cabinet for approval prior to initiating a scientific study within a given wild river corridor.

(12) "Resource removal" means exploration for, extraction or removal of a natural resource including, but not limited to, coal, oil and gas, minerals, rock, gravel, sand and soil.

(13) "Secretary" means the Secretary of the Environmental and Public Protection Cabinet.

(14) "Selective cutting (of timber)" means the selective removal during one entry of trees from an area such that a specified minimum residual stocking level is retained and evenly distributed over the harvest area. A selective cut creates or maintains an uneven-aged stand of timber.

(15) "Structure" means an aboveground object constructed, built or installed for a change of use, and shall exclude sediment ponds, roads and signs.

(16) "Visual intrusion" means resulting in the disruption, degradation or impairment of the natural or primitive appearance of an area in a wild river corridor, as viewed from the river or other designated public use area, and includes any land use that does not remain visually subordinate to the characteristic landscape.

(17) "Wild river" or "wild river corridor" means a stream segment and adjacent shoreland within boundaries set forth in 401 KAR 4:100 which are designated in accordance with KRS 146.241.

## Section 2.] General Policy.

(1) Wild rivers shall be managed to preserve their free-flowing condition and to protect the outstanding and unique aesthetic, scenic, recreational, fish and wildlife, botanical, historical, archaeological and other natural and cultural features which qualified the streams for designation as wild rivers.

(2) Additional management objectives shall be to afford opportunities to enjoy natural streams and to preserve for future generations the beauty of certain areas untrammelled by man. The office[cabinet] will not encourage public use of areas where it has been determined that the carrying capacity for one (1) or more uses has been reached or exceeded.

## Section 2[3]. Management Plans.

(1) The management of a given wild river corridor shall be according to a management plan developed by the office[cabinet].

(2) The office[cabinet] shall consult with landowners in the affected wild river corridor, citizen groups, industries and appropriate local, state and federal agencies in the preparation of each management plan.

(3) Public participation in the development of a management plan shall be provisioned by at last one (1) public hearing on the draft management plan followed by a thirty (30) day comment period prior to finalizing the plan.

(4)(a) The hearing, or hearings, shall be conducted in one (1) of the counties through which the designated portion of the river flows.[:]

(b) Notice of hearing shall be given in accordance with the provisions of KRS Chapter 424. The notice shall:

1. State the time, place and purpose of the hearing;
2. State the name and address of the person from whom a copy of the proposed management plan may be attained;
3. Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;
4. Be published in the county, or counties, through which the designated portion of the river flows, and in at least one (1) major newspaper; and
5. Set forth the address to which written comments on the draft management plan may be submitted, and the date by which those written comments shall be submitted.

(c) The hearing shall be conducted by a designated representative of the office[cabinet] who shall control the order of presentation.[:]

(d) Any interested person may appear at the hearing and make an oral or written presentation concerning the draft management plan. All oral presentations shall be recorded.[:; and]

(e) All written and oral comments shall be considered in the development of the management plan.

(5) Responsibility for the administration and management of a wild river shall be clearly delineated in the management plan for that river, and any management agreements between the office[cabinet] and local, state or federal agencies having overlapping jurisdiction over lands or waters within the wild river corridor shall be incorporated into the plan.

## Section 3[4]. Existing or Conforming Land Uses.

(1) Under the provisions of KRS 146.290, land uses that[which] are lawfully existing at the time the boundaries of a wild river are designated may continue even though the use does not conform to the purpose and intent of the Kentucky Wild Rivers Act or the management plan for a given wild river.

(2) Other than existing uses, land uses within wild river corridors which conform to the purposes and intent of the Kentucky Wild Rivers Act and the duly adopted management plan for each

wild river shall not require a change of use permit.

(3) Conforming uses shall include wilderness type recreation such as nonmechanized boating, hiking, hunting, fishing, camping, and sightseeing[and horseback riding], as well as scientific research, environmental education and related activities which preserve the primitive character and natural and cultural resources of the area.

(4) Other land uses shall qualify as conforming uses if they do not involve the clearing of more than one-half (1/2) acre of timber, nor constitute a significant visual intrusion within 100 feet of the river. Conforming uses may include the following:

(a) The routine maintenance, repair, renovation or replacement of existing roads, buildings or other structures or improvements to an existing use;

(b) The selective cutting of firewood or individual trees by a landowner for personal or family use;

(c) Landscaping and gardening, including flower, fruit and vegetable production;

(d) Fencing;

(e) The removal of noxious weeds from an area using direct application but not aerial spraying, and herbicides that are short-term, nontoxic to fish and wildlife and will not leach into surface waters or groundwater; and

(f) The clearing of diseased or insect- infested trees from an area greater than one-half (1/2) acre upon written authorization from the office[cabinet] based on the recommendation of a professional forester.

#### Section 4[5]. Permitted Land Uses.

(1) Land use changes authorized by the office[cabinet] through a change of use permit as required under KRS 146.290, shall comply with all applicable standards set forth in 400[404] KAR 4:140[.]

(2) Land use changes which require a change of use permit shall include:

(a) A resource removal, by methods other than surface mining;

(b) The selective cutting of timber as defined in 400 KAR 1:110 [Section 1 of this administrative regulation]; and

(c) A new agricultural use that requires clearing of timber from an area greater than one-half (1/2) acre or more in extent.

#### Section 5[6]. Prohibited Land Uses. Land uses established in subsections (1) through (3) of this section shall be prohibited.

(1) Pursuant to KRS 146.290, surface mining, timber harvest by methods other than selective cutting and in-stream disturbances are prohibited within a wild river corridor[.];

(2) Prohibited in-stream disturbances shall include but not be limited to, dam construction, dredging, spoil or fill deposition, channel diversion, channelization and mining of streambed materials[.]; and]

(3) The construction of roads, buildings or other structures to effect any use other than an existing or permitted land use, as set forth in Section 4 or 5 of this administrative regulation, is prohibited.

#### Section 6[7]. Public Use.

(1) Public use of wild river corridors shall be limited to the public waters and public lands or interests in lands acquired through lease, easement or other agreement entered into by the landowner. Public use of private property shall require permission from the landowner. Trespassing is subject to penalty as set forth in KRS 146.990. This section applies to the public use of state-owned lands and public waters within wild river corridors.

(2) The office shall[cabinet will] make every effort to inform the public that the wild river designation does not authorize public use of privately-owned lands, and will prepare maps delineating the boundaries of public lands within wild river corridors to reduce unintentional trespassing.

(3) In accordance with KRS 146.290, transportation shall be by foot, canoe, kayak, boat, with or without electric motor,[horseback] or other nonmechanized means except on existing public roads, as required for administrative and resource protection purposes, or as necessary to effect an existing or permitted land use.

(4) The office[cabinet] may condition or deny public access to a wild river if such use is causing substantial adverse impact on the scenic, aesthetic, natural, cultural, scientific or recreational resources, if private property is being damaged, or if user safety is being jeopardized.

(5) Cultural artifacts, relics, fossils and souvenirs shall not be removed from their site of discovery in a wild river corridor. Deliberate damage to plants, animals, artifacts or other special features is prohibited. A written request shall be submitted to and approved by the office[division] prior to the collection of any natural or cultural materials.

(6) Burying, dumping or depositing litter, soil, garbage, waste, scrap or other unsightly or offensive materials other than in receptacles provided for this purpose is prohibited.

(7) Horseback riding shall be allowed only on trails specifically designated for this use.

(8) Overnight camping and campfires shall be prohibited within thirty (30) feet of a wild river. No open fire shall be left unattended, and all fires shall be completely extinguished after use. Live vegetation shall not be cut for firewood.

(9) Camping within a state park shall be in accordance with 304 KAR 1:040.

(10) Hunting, fishing and trapping shall be subject to state and federal fish and wildlife laws and regulations, and shall comply with the following conditions:

(a) The construction of permanent shelters, lean-tos or other buildings is prohibited. Temporary blinds, stands or other structures shall be erected in a manner that will prevent injury to trees; and

(b) Trapping is prohibited within fifty (50) feet of designated boat access sites, boat portage trails and other designated public hiking trails, picnic areas and campgrounds.

(11) Carrying or discharging a firearm, bow and arrow or explosive substances shall be prohibited for any purpose other than hunting in accordance with state wildlife laws and the other provisions of this administrative regulation.

(12) Swimming and other in-stream recreational uses of a wild river shall be in accordance with Office[Division] of Water Patrol safety standards (402 KAR 4:080 and 4:130). Entering a wild river from the shores of a state park for swimming, bathing or other in-stream recreational use shall be allowed only in areas designated as swimming areas by the Department of Parks.

(13) Conduct which disturbs the peace or causes property damage within a corridor is prohibited.

(14) Public users of wild rivers are encouraged to leave in passing no mark upon the land that might diminish its value to another, and to make every effort to protect and enhance the unspoiled beauty of these areas as components of Kentucky's unique heritage.

#### Section 7[8]. Enhancement of Recreational Opportunities.

(1) The development of public access to a wild river will be compatible with the purposes and intent of KRS 146.200 to 146.360 and the duly adopted management plan for a given river, and shall conform to the natural character of the area.

(2) Development of public access may be used to enhance dispersed, nonmechanized recreational opportunities and provide information on safety, orientation, rules and administrative regulations and interpretation of special features in the area.

(3) Trails constructed within a wild river corridor will be designed and maintained to provide for nonmechanized recreational uses and to prevent soil erosion and compaction, trampling of vegetation, and other damage to the natural beauty and resources of the area.

(4) There shall be no cutting or removal of natural vegetation, living or dead, to create scenic vistas, except as expressly provided by law.

#### Section 8[9]. Commercial Uses.

(1) The operator of a new commercial service within a wild river corridor shall submit written notification to the office[cabinet] not less than thirty (30) days prior to commencing such use.

(2) The construction of access roads, ramps, wharves or boat



docks, buildings or other facilities required to effect a commercial use shall be located outside of a wild river corridor unless authorized by a change of use permit.

(3) The operator of a commercial service on a wild river shall comply with all applicable provisions of this administrative regulation, and shall be responsible for ensuring that the commercial use does not impair or contribute to an adverse impact on the aesthetic, scenic, ecological, scientific, recreational or other significant features in the corridor as identified in the management plan or by the office[cabinet], or cause substantial damage to soils, vegetation, fish and wildlife or water quality.

(4) The office[cabinet] may condition or deny commercial use of a wild river, as provided in Section 7(4) of this administrative regulation.

(5) In accordance with 304 KAR 1:030, operation of a commercial activity within a state park requires prior written consent from the Department of Parks.

(6) Commercial harvest of mussels by any method is prohibited in areas where mussel species considered endangered or threatened by the office[Kentucky Academy of Science] are known to occur.

#### Section 9[40]. Scientific Study.

(1) A research permit application[plan] shall be submitted to the office[cabinet] for approval prior to the commencement of any scientific study that may affect a wild river corridor conforming to 400 KAR 2:090 Section 18(3)(a).

(2) A final report with results, including data collected in a format supplied by the office, shall be submitted at the conclusion of the research. This data may be incorporated by the office into a research clearinghouse and inventory database in accordance with KRS 146.485 and 400 KAR 2:080 Section 6.[A research plan submitted to the cabinet on a form supplied by the cabinet shall contain the following information:

(a) The name, address, telephone number, professional affiliations and qualifications of the principal investigator;

(b) A U.S. geological survey 7.5 minute topographic map delineating the location and extent of the study area;

(c) The estimated dates of initiation and completion of the study;

(d) The objectives, methods and significance of the study and a statement as to the necessity or advantages of conducting the study within the wild river corridor;

(e) Plant or animal species or any special features which may be affected by the study, and the type and extent of any such effects; and

(f) A list of any plants, animals or other resources or materials to be collected, the estimated quantity to be collected, and the permit numbers of collection permits obtained from state and federal agencies.]

#### Section 10[44]. Utility Right-of-way Construction.

(1) As set forth in KRS 146.290, the construction of a transmission line or pipeline right-of-way within any portion of a wild river corridor shall require written approval from the office[secretary] prior to the initiation of any construction activities within the wild river boundaries.

(2) Authorization to construct a right-of-way shall require application by the owner of the utility or pipeline company or their engineering representatives, on an application form supplied by the office[cabinet]. The application shall include a land use plan containing the following information:

(a) A U.S. geological survey topographic map to scale not greater than one (1) inch equal to 500 feet, showing the precise route and dimensions of the right-of-way;

(b) The estimated dates for initiation and completion of construction and the name, address and telephone number of the person or persons in charge of the construction;

(c) A detailed description of the methods of construction and specifications, including profile sheets bearing the seal and signature of a registered professional engineer;

(d) A statement of possible alternate routes for the right-of-way and why the proposed route was selected;

(e) A detailed reclamation plan designed to return the disturbed area as nearly as possible to its former appearance and condition, including the use of native species to revegetate disturbed areas; and

(f) A detailed description of proposed methods for maintaining the right-of-way, including the brand names and methods of application of any herbicides to be used.

(3) Upon receipt of an application, an inspection of the proposed construction site will be made by office[cabinet] personnel with the property owner and applicant or their representatives, and personnel from appropriate state and federal agencies.

(4) The office[secretary] shall notify the applicant as to whether the application is approved or denied within sixty (60) days following receipt of the application, and will state the reasons for the decision.

(5) If an application is denied, the applicant may submit a revised application to adequately address the reasons for denial stated in the office's[secretary's] written decision.

(6) An application will be approved only if there is no possible alternative route for the right-of-way that would bypass or cause less impact to the wild river corridor, and the applicant agrees to restore all disturbed area within the wild river corridor as nearly as possible to its former appearance and condition, as required under KRS 146.290.

(7) Authorization to construct a right-of-way shall contain, but not be limited to, the following conditions:

(a) Wherever feasible, the right-of-way shall be routed to avoid steep slopes, erodible soils, surface waters and areas with high water tables, public recreation areas, and other significant natural and cultural areas identified by the office[cabinet], and shall be the minimum width necessary for construction and maintenance;

(b) Adequate measures shall be taken to control sediment and any hazardous substances, and to minimize the visual impact of the right-of-way when viewed from the wild river or other designated public use areas;

(c) Any timber cutting required shall be according to the provisions of 400[404] KAR 4:140, Sections 4 through 7, and 9 through 14 and Section 17(10) through (21);

(d) Every effort shall be made to minimize disturbance to the streambed, stream banks and fish and wildlife habitat during construction activities, and to keep timber slash and other debris out of surface waters and the immediate floodplain;

(e) Stream crossings by equipment or vehicles in a wild river corridor shall require the use of a temporary bridge or other methods approved by the office[cabinet] and be designed so as not to impede stream flow. Construction across surface waters shall occur when local fish and wildlife are not spawning or nesting;

(f) Vehicles and equipment shall be stored outside of the wild river corridor when not in use;

(g) Aerial spraying of herbicides shall not be permitted within the boundaries of a wild river. Direct application of herbicides at ground level shall be limited to brands that are nontoxic to fish and wildlife;

(h) Pipeline relief valves shall be located outside of the wild river corridors;

(i) Primary consideration shall be given to underground placement of transmission lines and pipelines. Overhead transmission lines and towers shall be in accordance with environmental guidelines required by the Rural Electrification Authority, and shall be designed so as to prevent electrocution or other injury to wildlife;

(j) Reclamation shall consist of establishing a permanent vegetative cover on all disturbed surfaces, planting native trees or shrubs where necessary to establish a buffer zone along the banks of the wild river, implementing measures to prevent access by off-road vehicles, and removing all evidence of construction activities;

(k) A performance bond, in an amount to be determined by the office[cabinet], shall be required for reclamation if the office[cabinet] determines that the proposed construction may potentially damage, degrade or otherwise have an adverse impact on any significant feature known to occur within the wild river corridor.

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(l) The applicant shall provide written notice to the office[cabinet] upon completion of reclamation, and office[cabinet] personnel will inspect the construction site to verify compliance with all permit conditions before the bond is released.

### Section 11[42]. Road Construction.

(1) In accordance with KRS 146.290, new permanent roads shall not be constructed within a wild river corridor except as authorized by the office[secretary] to enhance recreational opportunities or to protect soil, water or other natural resources.

(2) Temporary roads shall be constructed within a wild river corridor only as necessary to effect a use authorized by a change of use permit, and shall be closed and reclaimed immediately after the permitted land use is concluded.

(3) Any construction required to improve, repair or replace existing state or county-maintained roads or bridges shall require full environmental review by the office[division] and other appropriate state natural resource agencies prior to any construction activity.

(4) During authorized construction activities, no heavy equipment shall be driven through or into a wild river unless every feasible precaution has been taken by the operator to prevent damage to stream-bank vegetation, protect fish and wildlife habitat, control soil erosion and prevent stream sedimentation.

(5) When recommended by the office[secretary], design plans for improving or replacing a bridge across a wild river shall consider provisions for enhancing public access to the river for recreational uses consistent with the provisions of KRS 146.200 to 146.360.

### Section 12[43]. Agency Notification.

(1) State or local government agencies which engage in or regulate any activity within the watershed of a wild river shall notify the office[cabinet] prior to the initiation of any activity which may adversely affect the river, and shall provide the office[cabinet] an opportunity to review proposals and plans for the new activity.

(2) A change of land use on state-owned lands within a wild river corridor that does not conform with the purpose and intent of KRS 146.200 to 146.360 shall require that the state agency that owns the affected land obtain a change of use permit from the office[cabinet].

### Section 13[44]. Fire Control.

(1) State fire control provisions of KRS Chapter 149, and any which may be established by cooperative agreement, shall be strictly enforced.

(2) Fire shall be controlled by methods that require the least disturbance to soils and vegetation, and use of heavy equipment shall be limited to situations where an imminent[eminent] threat to life or personal property exists. Any fire hazard reduction or replanting after fire shall be coordinated with the office[division].

### Section 14[45]. Signs.

(1) The posting of commercial signs, advertisements, announcements, campaign slogans or other written messages other than those related to permitted uses shall be prohibited.

(2) As otherwise allowed by law, signs may be installed by the management agency, local government, landowner or public utility for the purpose of public safety, posting of property boundaries or property protection, identification of river corridor boundaries and public access points or as otherwise deemed necessary for resource protection, interpretation or regulatory purposes.

(3) Signs shall be of a design and construction conforming to the natural setting in which they are located, and shall not exceed sixteen (16) square feet in size.

(4) Any person with the permission of the landowner may post informational and directional signs within a corridor as are necessary to the continuance of an existing use.

### Section 15[46]. Enforcement and Hearings.

(1) Whenever the office[cabinet] has reason to believe a violation of 400[404] KAR Chapter 4 has occurred, a notice of violation shall be issued.

(2) The provisions of KRS 224.10-420 shall apply to any office[cabinet] order or determination made pursuant to the provisions of 400[404] KAR Chapter 4.

(3) Hearings required to be conducted due to the issuance of a notice of violation issued pursuant to subsection (1) or the filing of a petition pursuant to subsection (2) of this section shall be conducted pursuant to KRS 224.10-440.

(4) Appeals may be taken from any final order of the cabinet pursuant to KRS 224.10-470.

(5) Violations of the provisions of 400[404] KAR Chapter 4 shall be liable to the civil penalty set forth in KRS 146.990(1).

(6) Orders for remedial action and recovery of penalties will be sought pursuant to KRS 146.350.

Section 16[47]. Severability. In the event that any provision of KRS 146.200 to 146.360 or any administrative regulation promulgated pursuant hereto is found to be invalid by a court of competent jurisdiction, the remaining wild rivers regulations shall not be affected or diminished thereby.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth guidelines for the administration, management and public use of wild river corridors, including criteria for delineating existing, conforming, permitted and prohibited land uses and conditions of authorization for utility right-of-way construction.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the guidelines for the administration, management and public use of wild river corridors, including criteria for delineating existing, conforming, permitted and prohibited land uses and conditions of authorization for utility right-of-way construction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.270 indicates the Wild Rivers System shall be administered by the Office of Kentucky Nature Preserves according to the policies and criteria set forth in KRS 146.200 to 146.360. The cabinet upon recommendation of the office shall adopt rules or promulgate administrative regulations necessary for the preservation and enhancement of the stream areas as set forth in KRS 146.250, and for control of recreational, educational, scientific, and other uses of these areas in a manner that shall not impair them.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation sets forth guidelines for the administration, management and public use of wild river corridors as authorized by KRS 146.200 to 146.360.

(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 makes changes to the administrative regulation related to the passage of SB 129. It removes definitions from previous version which are now addressed in 400 KAR 4:110. It removes horseback riding from those land uses that conform to the purpose and intent of the Kentucky Wild Rivers Act.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the definitions to match the amendments to the authorizing statutes. It will remove definitions from previous version which are now addressed in 400 KAR 4:110. It removes horseback riding from those land uses that conform to the purpose and intent of the Kentucky Wild Rivers Act.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners that have a wild rivers corridor on their property.

(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 will need to be taken to comply with this amendment. The amendments deletes definitions from the administrative regulation which are now addressed in 400 KAR 4:110 and removes horseback riding from those land uses that conform to the purpose and intent of the Kentucky Wild Rivers Act.

(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 these amendments. The information is essentially the same except for the changing of the agency name.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 definition administrative regulation does not involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are mainly related to the reorganization resulting from the passage of SB 129.

## 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.270

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

## ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

### 400 KAR 4:130. Wild rivers change of use permit procedures.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.990

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. In such administration, primary emphasis shall be given to protecting aesthetic, ecological, scenic, historic, archaeological and scientific features of the area. Under the provisions of KRS 146.290, the select cutting of timber, a resource removal or an agricultural use may be allowed pursuant to administrative regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 to 146.360; uses which exist at the time the boundaries of a wild river are designated are exempt from this provision. KRS 146.290 requires that any permit granted to conduct a change of use shall contain such restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the stream area and the public trust therein, within the intent of KRS 146.220. This administrative regulation establishes the procedure by which a landowner, as defined in 401 KAR 4:110, may apply to the secretary for a change of use permit to conduct a new land use within a wild river corridor.

Section 1. Applicability. In accordance with KRS 146.290, a new land use activity on state-owned or private lands shall not be undertaken within a wild river corridor until the landowner has obtained a change of use permit from the office[cabinet]. This

administrative regulation applies to any landowner applying for a permit to change a land use within a wild river corridor. Nothing herein shall be construed as superseding any requirements of other office[cabinet] programs or of other state or federal agencies.

Section 2. Permit Application.

(1) A landowner desiring to commence the select cutting of timber, a resource removal or a new agricultural use on his or her property located within a wild river corridor shall apply to the office[secretary] for a change of use permit on an application form supplied by the office[cabinet].

(2) The application shall include the name, address and telephone number of the landowner and the operator of the new land use.

(3) The application for removal of a subterranean resource shall include the names and addresses of all applicable surface owners. The applicant shall notify all applicable surface owners at the time application is made for a change of use.

(4) The application shall include a land use plan to consist of:

(a) A U.S. geological survey 7.5 minute topographic map which delineates the exact location and extent of the new use and any access roads being constructed or improved to effect the new use, in relation to all surface waters within the wild river corridor.

(b) The estimated dates of initiation and completion of the new use, where applicable.

(c) An estimate of the total acreage of the new use.

(d) A description of the methods for conducting the new land use including, but not limited to, any construction, excavation, blasting or tree cutting activities.

(e) A description of best management practices for controlling soil erosion and stream sedimentation, maintaining existing water quality, handling of wastes, hazardous substances and excess rock and earth, and preventing and controlling spills and accidents.

(f) A list of herbicides, pesticides, and other chemical products to be used and the planned methods of application and control.

(g) A description of reasonable alternate locations or routes for the land use and why the proposed site was chosen.

(h) A reclamation plan and time schedule which describes procedures for revegetating the affected land, types and locations of plant species to be used, and other measures required under 400[404] KAR 4:140, Section 14.

(5) The land use plan for underground mining shall include the following additional information:

(a) A second topographic map to scale not greater than one (1) inch equal to 500 feet, prepared, certified and registered by a professional engineer in accordance with the provisions of KRS Chapter 322, which shall delineate control of all surface and groundwater drainage on the site.

(b) Specific provisions for preventing water from entering the mine and for preventing discharges from the mine during and after the mining activity.

(c) A preblasting report, signed by a professional engineer, of the potential for damage from blasting to stream hydrology, including groundwater and subsurface drainage effects, historic structures, significant geologic formations or other significant features located within a wild river corridor.

(d) A dust control plan for the mining area.

(e) Evidence that the operation will not produce or discharge acid water or acid-forming materials.

(f) A copy of the subsidence control plan.

(6) The land use plan for oil and gas production shall include a spill prevention and control countermeasure plan to prevent and control accidental discharges of hazardous substances into surface and groundwaters.

(7) The land use plan for select cutting of timber shall contain the following additional information:

(a) A logging plan or other description of the planned cutting method and procedures for transporting logs and disposing of slash.

(b) The precise location and size of the log landing area(s) and the routing of haul roads.

(c) A timber marking report conducted and signed by a professional forester, indicating species composition, number of

trees of each species, total volume and average volume per tree for each species, number of cull trees, and a description of the method used to mark the trees.

(d) A forest management plan developed by a professional forester may be submitted as part of the land use plan to waive the requirement of 400[404] KAR 4:140, Section 17(5), if it employs the selective method of cutting trees and is otherwise compatible with the purpose and intent of KRS 146.200 to 146.360.

(8) The land use plan for an agricultural use involving livestock or poultry production shall describe a system for storing and disposing of animal wastes and for excluding livestock from buffer zones.

(9) The land use plan for the construction and operation of a public access facility, boat dock, ramp or other recreational facility shall include the following additional information:

(a) Design plans, signed by a registered engineer, showing the layout of all planned facilities, including roads, parking areas, trails and buildings.

(b) Evidence that any structures which would extend into the water will not substantially impede natural stream flow.

(c) A list of all permits applied for to conduct the new land use, as required under KRS Chapter 151 and other applicable state and federal laws.

(d) A waste control and disposal plan, if applicable.

Section 3. Inspection. Within thirty (30) days following receipt of a completed permit application, office[cabinet] personnel will conduct an inspection of the site of the proposed land use change to identify and map the occurrences of significant features and other sensitive areas which may require special protective measures.

Section 4. Public Hearing.

(1) Within sixty (60) days following receipt of a completed permit application, the office[secretary], in accordance with KRS 146.290, will hold a public hearing on the application and will notify the applicant of same by certified mail, return receipt requested.

(2) Public notice of the hearing will be given according to the provisions of KRS Chapter 424 and will state the nature and location of the proposed change of use.

(3) At the hearing, any interested party may attend and be represented by counsel and shall be allowed to present evidence as to whether the proposed change of use is consistent with the wild river management plan, the purpose and intent of the Kentucky Wild Rivers Act and other applicable law. The hearing need not conform to the strict rules of evidence as practiced in the courts of the Commonwealth and shall be conducted so as to permit the full development of all relevant issues and to insure that all persons have a fair and reasonable opportunity to be heard.

(4) The hearing shall be recorded, and the application, comments received from the public, and recommendations from government agencies shall be entered into the record. The cost of transcription of the record shall be borne by any party requesting a transcript.

Section 5. Permit Application Review.

(1) The office[secretary] shall evaluate all matters on record in light of the provisions of KRS 146.290, and shall further consider:

(a) The possible effects of the proposed new use on water quality, adjacent lands, aesthetics, fish and wildlife, vegetation, geologic features, historical and archaeological sites, recreational values, and endangered and threatened species.

(b) Alternate uses to which the land could be put which would be more consistent with the purposes and intent of KRS 146.200 to KRS 146.360.

(c) Alternate locations, including any outside of the wild river corridor that may be more appropriate for the proposed land use.

(d) The extent to which the proposed change of use or an alternate use conforms to the river management plan developed pursuant to KRS 146.270.

(e) Whether the denial or the issuance of a permit is consistent with the office[s]'[cabinet's] mandate to protect the waters of the Commonwealth for the use, welfare and enjoyment of all of its

citizens, and with the rights of landowners to the beneficial use of their property.

(f) Any existing laws or administrative regulations which apply generally to the proposed change of use.

(g) Whether the proposed change of use constitutes a threat, directly or indirectly, to public health or safety.

(h) Secondary effects likely to be caused or encouraged by the proposed change of use, such as off-road vehicle use, excessive noise, soil erosion, air or water pollution and economic factors relating to costs of additional facilities or resource protection measures which may be required in the general area in the future as a result, directly or indirectly, of the proposed change of use.

(2) In accordance with KRS 146.290, a written order shall be issued by the office[secretary] within sixty (60) days following the public hearing. The order shall consist of a permit with appropriate standards attached in accordance with 400[404] KAR 4:140 if the application is approved, specify objections to the application and procedures for appeal if the permit is denied, or recommend an alternate use consistent with the Kentucky Wild Rivers Act. The order shall set forth the finding of fact and conclusion supporting the ruling. The order shall be forwarded to the applicant by certified mail, return receipt requested.

Section 6. Permit Conditions. (1) A permit to conduct a change of use will contain site-specific restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the wild river area and the public trust therein, within the intent of KRS 146.220. (2) A permit will become effective on the date of issuance and will remain in effect for one (1) year, at which time the permittee shall notify the office[cabinet] in writing as to the status of the new land use. The permit may be renewed annually upon request by the permittee if the new use has remained consistent with the land use plan submitted and has complied with all permit conditions, the provisions of 400[404] KAR 4:110 to 4:140 and other applicable laws and administrative regulations.

(3) The landowner to whom a change of use permit is issued shall be held fully accountable for compliance with 400[404] KAR 4:110 to 4:140 and any additional terms and conditions imposed by the permit.

(4) The permit application and land use plan submitted shall be an instrument for adjudging compliance with the permit. Any changes in the application or land use plan shall require amendment of the permit before such changes are implemented. A permit may be revoked or restricted in the event that the application submitted is found to contain falsified or erroneous information or if conditions of the permit or any of the provisions of 400[404] KAR 4:110 to 4:140 are violated. Violations shall be subject to penalty as set forth in KRS 146.990.

(5) A change of use permit shall apply to the property for which it was granted and is transferable to any future owner of the property or interest in the property. While the permit is in effect, the permittee shall notify the office[cabinet] of any sale, lease or other transfer of interest in the property to which the change of use applies, and shall make acknowledgment of the permit a condition of the sale, lease or other transfer of interest in the property.

#### Section 7. Appeal of Office's Determination[Secretary's Order].

(1) The landowner may file a written objection to the final determination[ruling] on or before thirty (30) days of the date of its issuance. The written objection shall set forth the basis of the objection and be filed with the Docket Coordinator of the Cabinet's Office of Administrative Hearings[Division of Hearings].

(2) After filing of the written objection, an authorized agent of the office [secretary] shall meet with the landowner and attempt to reach an agreement with respect to a modification of the ruling.

(3) If no agreement is reached within sixty (60) days of filing of the written objection, the office[secretary] shall proceed pursuant to KRS 146.290.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the change of use permit procedures necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the change of use permit procedures necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250. It provides for a clear understanding of the procedures and contact with the office in regards to change of use permits.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the administrative regulation to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners that have a wild rivers corridor on their property.

(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 will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name and correcting incorrect citations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 400 KAR 4:140. Wild rivers change of use permit standards.

RELATES TO: KRS 146.220, 146.270, 146.280, 146.290, 146.350, 146.990, 151.140

STATUTORY AUTHORITY: KRS 146.270, 151.125, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations as necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. In such administration primary emphasis shall be given to protecting aesthetic, scenic, historic, archaeological, and scientific features of the area. Under the provisions of KRS 146.290, the select cutting of timber, other resource removal or an agricultural use may be allowed pursuant to administrative regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 to 146.360. KRS 146.290 requires that any permit granted to conduct a change of use shall contain such restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the stream area and the public trust therein within the intent of KRS 146.220. This administrative regulation sets forth minimum performance standards for conducting a land use change in a wild river corridor as necessary to protect the scenic beauty and environmental quality.

Section 1. Applicability. This administrative regulation applies to new land uses, as defined in 400[404] KAR 4:110, within designated boundaries of a wild river corridor which require a change of use permit from the office[cabinet]. Nothing herein shall be construed as superseding any requirements of other office[cabinet] programs or of other state or federal agencies.

#### Section 2. Buffer Zones.

(1) Other than as necessary to provide river access sites authorized by the office[cabinet], a change of land use shall be located outside of buffer zones.

(2) Where the adjacent slope is less than forty (40) percent the minimum width of a buffer zone bordering streams and other surface waters shall be 100 feet as measured laterally from the bank of the stream or other surface water. Where the adjacent slope is forty (40) degrees or greater, the buffer zone width shall vary as follows:

Slope of Land (percent)	Minimum Width of Buffer Zone (feet)
40 to 49	115
50 to 59	125
60 to 69	145
70 to 79	165

(3) The boundaries of a buffer zone shall be flagged by the permittee with durable, brightly-colored material prior to the commencement of a permitted change of use.

Section 3. Extent of Disturbance. A new land use shall occupy the minimum area necessary to accomplish the intended use as specified in an approved land use plan.

#### Section 4. Water Quality.

(1) In accordance with the nondegradation provision for outstanding resource waters contained in 400[404] KAR 5:029(2)(4), background water quality of surface waters within a wild river corridor shall be maintained or enhanced.

(2) Any new discharge of a substance or combination of substances into a surface water within a wild river corridor shall maintain or enhance background water quality in the receiving stream.

(3) Water quality data shall be collected as necessary to



document maintenance of background water quality.

(4) The natural flow of water in wild rivers shall be maintained. Water withdrawals shall require a permit as provided in 400[404] KAR 4:010 and KRS 151.140, and shall not be allowed to impair existing recreational or fish and wildlife uses of the river, nor adversely impact endangered or threatened species.

#### Section 5. Erosion Control.

(1) Best management practices shall be implemented as necessary to control soil erosion and sediment wherever there is ground surface disturbance; sediment shall not be allowed to accumulate in surface waters.

(2) Temporary erosion control measures shall be immediately implemented on all disturbed areas not needed for ongoing operation until permanent control measures can be established, and shall minimally include use of one (1) or more of the following:

(a) All disturbed surfaces shall be graded, seeded, fertilized and mulched to establish complete vegetative ground cover. Native species of grasses and legumes shall be used wherever conditions allow.

(b) Sediment ponds and filters, such as baled vegetation, shall be used as necessary to trap sediment within disturbed areas. Filter fences may be used in situations where other methods may not provide adequate control.

(c) On slopes of ten (10) percent or more, diversion structures shall be installed uphill of disturbed areas as needed to divert surface run-off into vegetated areas.

(3) Vehicular traffic shall be restricted to the access roads and skid trails approved in the land use plan.

(4) Activities involving the use of heavy equipment shall be suspended during wet soil conditions, and heavy equipment shall be stored outside the corridor when not in use.

(5) During construction activities, storage and disposal of unconsolidated materials shall occur only at locations approved in the land use plan, and topsoil removed from the operation site shall be stockpiled and stabilized for use during reclamation.

(6) Intermittent streams which are tributaries of a wild river may be temporarily impounded or otherwise altered to effect a permitted use. Streambed materials shall not be moved or removed from the streambed of a permanent or intermittent stream for any purpose.

#### Section 6. Stream Crossings.

(1) Vehicular stream crossings shall be prohibited where stream bank slopes exceed ten (10) percent, or where the crossing might otherwise have an adverse impact on the stream environment.

(2) Natural drainages which are not composed substantially of rock shall be accommodated with an appropriately sized drainage relief structure, such as a culvert or temporary bridge, at the point of intersection with a road.

(a) Stream crossings shall occur only at right angles where the stream channel is most narrow and has firm, rocky banks.

(b) Relief structures for crossing a permanent stream shall minimally consist of a closed culvert designed to handle a ten (10) year, twenty-four (24) hour precipitation event, and shall be embedded in clean rock fill and covered by compacted fill to a minimum depth of one (1) foot. The bottom of culverts shall be flush with stream substrates.

(3) As required under KRS 151.250, a permit to authorize construction in a flood plain must be obtained from the office[cabinet] prior to bridge construction if the area of the watershed is one (1) square mile or greater.

#### Section 7. Access Roads.

(1) Existing roads shall be used whenever possible to minimize surface disturbance.

(2) Best management practices for road construction, adopted by reference in [404] KAR 5:200, shall be employed to the greatest extent possible during road construction and maintenance.

(3) Roads shall be routed to follow the existing land contour as closely as possible and to avoid surface waters, flood plains and any areas vital to the preservation of significant features. Except for necessary stream crossings or provision of public access to the

river, no portion of any road shall be located in a buffer zone or streambed.

(4) Roads shall not exceed a maximum grade of ten (10) percent for distances of more than 150 feet. Portions of roads on grades steeper than ten (10) percent shall be graded and surfaced with stable materials such as limestone rock, crushed gravel or other material approved in the land use plan, and shall be sufficiently durable for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used. Acid or toxin-forming substances shall not be used for road surfacing.

(5) The width of a road shall be appropriate for the anticipated volume of traffic and the size, weight, and speed of vehicles to be used and shall not exceed sixteen (16) feet for single-lane traffic unless special exemption is made on the application.

(6) Vegetation shall not be cleared from an area greater than the width necessary for road and associated ditch construction. Road shoulders shall be seeded in grass cover immediately after construction is completed, and ditches shall be lined with gravel.

(7) Roads constructed to effect a permitted use shall be closed by means of a locked gate located at or near the corridor boundary whenever adverse weather or other conditions cause operation and maintenance of the permitted use to be suspended for an extended period of time.

#### Section 8. Structures.

(1) Structures permitted by the management agency shall be located either:

(a) Beyond the limit of the 100-year flood plain as determined by the office[division]; or

(b) No closer than 250 feet from the nearer bank of the wild river.

(2) Structures shall be screened by vegetation or topographic features so as not to be visible from the nearer bank of the wild river.

(3) Any new dock, boat ramp or other river access facility shall be constructed so as to minimize its intrusion into the river, if any, and shall not substantially impede natural stream flow.

(4) Best management practices for construction shall be used as necessary to control erosion and prevent sedimentation of surface waters.

#### Section 9. Control of Hazardous Substances.

(1) To the extent not inconsistent with any other applicable law, any hazardous substance used for or resulting from a new land use shall be confined to the smallest practicable area, shall be stored so as to prevent escape as a result of rain, percolation, high water or other cause, and shall be properly and legally disposed of outside of the wild river corridor.

(2) The operator shall immediately notify the office[cabinet] of any accident involving fire, personal injury, discharge or accidental bypass of any hazardous substance within a wild river corridor, and shall submit a written report to the office[cabinet] within forty-eight (48) hours of an accident event.

Section 10. Solid Waste Disposal. Scrap and waste materials used to effect a new land use shall be removed and properly disposed of outside of the corridor immediately after their use is concluded.

Section 11. Visibility. Buildings, facilities and other structures shall be made as inconspicuous as possible by painting or staining in muted tones or[and, or] by screening with native vegetation. Electric lines shall not be strung across a wild river unless no other option is available, and shall be hidden to the extent possible.

#### Section 12. Cutting of Vegetation.

(1) Any tree cutting required for a new land use, other than the permitted select cutting of timber or a new agricultural use, shall be limited to trees which interfere with the construction or operation of the permitted use, as approved in the land use plan.

(2) Burning of forest vegetation shall be prohibited unless authorized by the Division of Forestry, or the U.S. Forest Service on federal lands, for purposes of disease control or as part of a

prescribed burn and shall conform with other applicable provisions of law.

(3) Every effort shall be made to avoid unnecessary removal or trampling of vegetation within a corridor.

Section 13. Operation and Maintenance. All operation and erosion control structures and facilities shall be routinely inspected and maintained by the operator to ensure proper functioning and to prevent the accumulation or accidental discharge of hazardous substances or waste materials.

Section 14. Reclamation.

(1) The permittee shall provide written notification to the office[cabinet] immediately upon the conclusion of a new land use and shall begin implementing reclamation measures within thirty (30) days following such notifications.

(2) Reclamation shall involve restoration of all disturbed area to its predisturbance appearance and condition or an improved condition that will enhance natural and aesthetic values.

(3) Reclamation shall be completed within ninety (90) days following conclusion of the new use unless an exception is approved by the office[cabinet] before the ninety (90) day period ends.

(4) All facilities and structures installed for the new use, including temporary erosion control and drainage structures, shall be removed from the corridor, and the natural contours and drainage patterns shall be restored. Culverts and other relief structures may remain if approved by the office[cabinet] to protect the natural and aesthetic values of an area.

(5) Unless otherwise approved in the land use plan, roads constructed for the permitted use shall be reclaimed by effectively blocking the road entrance to vehicular use, removing water control devices, restoring the ground surface to its natural contours, and seeding, fertilizing and mulching the roadbed. Native species of plants approved in the land use plan shall be used wherever conditions allow, and those having wildlife value will be preferred.

(6) Tree species which existed on the site prior to the land use change shall be planted on all areas cleared of trees during the land use change.

(7) Reclamation shall be considered complete when an inspection by office[division] personnel determines that the affected site resembles, as closely as possible, the condition and appearance of the land and vegetation that existed prior to the land use change.

(8) Failure of the operator to comply with these standards shall be cause for the denial of any future permit to conduct a change of use on land within a wild river corridor involving the operator.

Section 15. Additional Standards Specific to Exploration For and Extraction Of Oil and Gas.

(1) A spill prevention and control countermeasure (SPCC) plan shall be prepared in accordance with 40 C.F.R. Part 112 and implemented before drilling begins. The SPCC plan shall contain a contingency plan for reporting and controlling accidental discharges according to 400[404] KAR 5:015.

(2) The area of disturbance at each well shall not exceed sixty (60) feet by 100 feet unless otherwise approved in the land use plan.

(3) Prior to drilling, an area forty (40) feet in diameter centered around each well shall be isolated by an earthen dike twelve (12) inches or more in height, and the enclosed ground surface shall be lined with three (3) inches or more of sorbent material.

(4) Acids and other well drilling and cleaning fluids shall be handled in accordance with Section 9 of this administrative regulation.

(5) Blowout prevention equipment shall be installed on wells during drilling.

(6) The permittee shall provide written notification to the office[division] of the planned dates for drilling to provide an opportunity for office[division] personnel to be present on-site during drilling activities.

(7) For air rotary or other dry methods of drilling, dust and other particulate matter blown from the well shall be directed away from

surface waters and stockpiled in a manner that will prevent its entry into surface waters as a result of rain, percolation, wind or other cause. Dust may be controlled by injecting water into the air stream at a rate of approximately three (3) gallons per minute. Water and other fluids used in the drilling process shall not be discharged into surface waters.

(8) Whenever drilling or production is suspended for twenty-four (24) hours or longer, all valves and blowout prevention equipment shall be closed.

(9) Storage or loadout tanks shall be equipped with an oil brine separator and a safety valve to prevent accidental overflow of oil, and all valves and other fluid controls shall be kept locked or be removed when the operator is off-site to prevent accidents due to vandalism.

(10) No produced water shall be discharged into surface or groundwaters within a wild river corridor.

(11) Storage of produced water within a wild river corridor shall be in a closed tank having a minimum thirty (30) day storage capacity to prevent accidental discharge. Fluids shall be safely removed from the tank when the tank becomes filled to no more than two-thirds (2/3) capacity and be properly disposed of.

(12) Pits constructed to temporarily hold brine or other fluids produced during drilling shall be located beyond flood plains and other areas prone to flooding, and be constructed according to 400[404] KAR 5:090, Section 9(5)(a).

(13) Disposal of produced water shall be by reinjection into a disposal well in accordance with 400[404] KAR 5:090, Section 11, and require an underground injection control permit as provided for in 40 C.F.R. 146, or shall be transported outside of the corridor and reinjected into an approved disposal well.

(14) Any pipelines leading from pumps to storage or loadout tanks shall be fitted within a second pipe or within an open culvert lined with nonpermeable material that shall act as a catch basin for any accidental discharge of oil or brine.

(15) Pipelines shall be placed as far away as possible from streams and other surface waters, shall follow an access road wherever possible, and shall not be routed across a wild river.

(16) Facilities, roads, collecting lines and other structures shall be inspected daily by the operator when wells are producing to ensure erosion control and prevent accumulations or leaks of oil, produced water or other hazardous substances.

(17) Spills or leaks of oil, produced water, or drilling or cleaning fluids shall be contained by the operator immediately upon discovery, be disposed of outside of the corridor in an approved manner within twenty-four (24) hours of discovery, and be reported to the office[cabinet] in accordance with 400[404] KAR 5:015 and 40 C.F.R. Part 110.

(18) The operator shall keep sorbent material, fire extinguishers and other firefighting tools readily accessible on the site to control fire or an accidental discharge of oil or produced water.

(19) Trailers, mobile homes or other temporary or permanent structures used to house operation personnel shall not be installed within a wild river corridor.

(20) Reclamation shall include the plugging of all wells in accordance with oil and gas regulations, and the plugging affidavit shall be submitted to the office[division].

Section 16. Additional Standards Specific to Underground Mining.

(1) No surface disturbance resulting from underground mining shall occur within the buffer zones of streams and other surface waters within a wild river corridor.

(2) Drainage from any surface disturbance resulting from underground mining shall be controlled pursuant to 405 KAR 18:060 and 18:070 following the guidelines contained in "Best Management Practices for Surface Coal Mining," published in 1984 and adopted by reference herein. Copies of this document can be obtained from the Nature Preserves Commission, 300 Sower Boulevard, Frankfort, Kentucky 40601.

(3) Mine surface entrances shall be located outside a wild river corridor wherever possible.

(4) Underground mining shall not be permitted where

subsidence or landslide cannot be adequately controlled. If subsidence or surface displacement of soil, rock or other ground material due to mining activities causes an adverse impact to the river or other surface waters within a wild river corridor, the mining operation shall be suspended until such time as the operator has corrected the damage and provided evidence that further subsidence or landslide shall not occur.

(5) A subsidence event shall be reported to the ~~office~~~~[cabinet]~~ within twenty-four (24) hours of discovery, the surface impacts of subsidence shall be corrected and the area restored to its previous condition before mining commences. The disturbed area shall be revegetated, using native grasses and legumes wherever conditions allow, and be thoroughly mulched with straw or other suitable material until a vegetative cover becomes established.

(6) In addition to the standards set forth in this administrative regulation, any roads constructed or improved to effect a mining use shall be in accordance with 405 KAR 18:230, and shall be constructed and maintained using best management practices for mining haul roads. Other transportation systems such as tramways, railroad loops or spurs shall not be allowed within a wild river corridor unless such access would cause less impact on the river environment than any alternative system.

(7) Underground development waste, spoil, coal or other hazardous substances shall be transported to proper storage and disposal areas outside of the wild river corridor, and shall otherwise be handled according to 405 KAR 18:130 and 405 KAR 18:190. No tipplis, processing or refuse areas shall be located within a wild river corridor.

(8) Mine shafts shall not be routed beneath streams and other surface waters in order to avoid subsidence and physical damage to natural surface drainage patterns.

#### Section 17. Additional Standards Specific to the Selective Cutting of Timber.

(1) Timber cutting shall follow best management practices required under the Kentucky Forest Conservation Act, KRS 149.342-.344 and the Kentucky Agriculture Water Quality Act, KRS. 224.71-100 through 224.71-140, and related practices found in the most current revision of the Kentucky Agriculture Water Quality Plan available from the Kentucky Division of Conservation~~[to the fullest extent possible the guidelines contained in "Forest Practices Guidelines for Water Quality Management," published July 1980 and adopted by reference herein. Copies of this document can be obtained from the Nature Preserves Commission,] 300 Sower Boulevard, Frankfort, Kentucky 40601.~~

(2) A professional forester shall survey and mark all trees to be cut. A minimum residual basal area of not less than sixty (60) square feet per acre shall be left standing and evenly distributed over the harvested area.

(3) The boundaries of the area to be cut shall be clearly marked using paint.

(4) Prior to cutting, all active den trees and at least three (3) mast-producing trees per acre consisting of trees in the largest size class in the stand, shall be marked and left standing.

(5) Tree cutting shall not be repeated in the permitted area at intervals of less than twenty (20) years from the date that reclamation is completed as specified in Section 14(7) of this administrative regulation, unless the landowner has submitted a timber management plan as part of the land use plan, approved by a professional forester, which recommends a shorter interval.

(6) The selective cutting of trees shall be prohibited within buffer zones except to remove diseased or insect-infested trees or those becoming uprooted due to natural causes.

(7) Construction of roads and skid trails shall occur outside of buffer zones, unless less impact would result from using an existing road in a buffer zone and be routed to follow the contours of the land.

(8) Trees used for fastening or attaching cables, guys or other equipment shall be adequately protected from possibly injury.

(9) In hilly terrain, logs shall be skidded uphill where possible, on trails designed and maintained for this purpose using best management practices, and shall not be skidded through surface waters.

(10) The amount of surface disturbance required for construction of roads, skid trails and log landings shall be kept to the minimum required for such purposes, and the area of a landing shall not exceed 6,000 feet unless an exception is approved in the land use plan.

(11) Log landings shall be located so as to minimize erosion and wherever possible be located on well-drained sites on slopes of less than ten (10) percent. Where necessary, a landing shall be protected from overland flow of water by construction of a diversion ditch on the uphill side to divert water into well-vegetated areas.

(12) Timber shall be cut as close to the ground as is reasonably practicable, with the height of the stumps not to exceed twelve (12) inches above ground on the uphill side of the tree.

(13) Trees shall be cut so as to fall away from streams and other surface waters, rock houses, historic structures and other sensitive areas identified by the ~~office~~~~[division]~~.

(14) Tree tops and other nonmarketable timber slash shall be lopped to within two (2) feet of the ground surface, or chipped and spread on disturbed areas to control erosion. Slash shall be randomly placed within a corridor.

(15) Pesticides and herbicides shall be used in accordance with the land use plan submitted as part of the permit application.

(16) Facilities for processing logs shall be located outside wild river corridor boundaries.

(17) Logging operations shall cease during wet soil conditions.

(18) At the conclusion of the land use change, log landings, skid trails and haul roads shall be reclaimed according to Section 14 of this administrative regulation.

(19) A permit to conduct select cutting of timber shall not be extended more than 180 days beyond the original permit expiration date.

#### Section 18. Additional Standards Specific to Agriculture.

(1) A new agricultural use within a wild river corridor shall follow the Kentucky Agriculture Water Quality Act, KRS. 224.71-100 through 224.71-140, and related practices found in the most current revision of the Kentucky Agriculture Water Quality Plan available from the Kentucky Division of Conservation~~[to the fullest extent possible the guidelines contained in "Best Management Practices for Agriculture," published July 1985 and adopted by reference herein. Copies of this document can be obtained from the Nature Preserves Commission,] 300 Sower Boulevard, Frankfort, Kentucky 40601.~~

(2) The removal of trees to effect a new agricultural use shall be subject to all applicable provisions of Section 17 of this administrative regulation.

(3) Where little or no vegetative ground cover exists between the proposed agricultural use and a stream or wetland, native trees and ground cover shall be planted along the banks of the surface water to create buffer zones prior to the commencement of the agricultural use. Plant species will be recommended by the ~~office~~~~[division]~~.

(4) Severely eroded, sediment-producing areas shall be properly stabilized using best management practices for critical areas prior to the commencement of a new agricultural use in an area.

(5) Conservation tillage methods shall be employed to the extent practicable on lands having slopes of ten (10) degrees or greater.

(6) A cover crop shall be planted in cultivated fields during winter and other periods when the cultivated crop does not provide adequate ground cover.

(7) Livestock shall be excluded from buffer zones by fencing or other methods.

(8) Watering areas for livestock shall be located outside of buffer zones.

(9) The number of livestock per area of pasture shall be estimated in the land use plan and shall be maintained at or below the level necessary to sustain complete ground cover.

(10) Animal wastes shall be properly stored and disposed of in a manner that will prevent their introduction into streams. Spreading of waste over fields as a disposal method shall be avoided during periods of heavy rainfall or frozen soil conditions.

(11) Any pond constructed to hold animal waste shall be located as far away as possible from streams and other surface waters, and be designed to hold the run-off from a twenty-five (25) year, twenty-four (24) hour storm event plus six (6) months of precipitation.

(12) A perennial cover crop shall be planted between trees in orchards and nurseries immediately after the nursery stock is planted.

(13) The use of pesticides and herbicides shall be restricted to those approved in the land use plan, and the use of a persistent, toxic substance shall not be approved if an equally effective, less toxic and less persistent product is available.

(14) Aerial spraying of chemicals shall not be allowed within a wild river corridor.

(15) The ~~office~~<sup>cabinet</sup> may attach additional standards to a permit authorizing an agricultural use on highly erodible lands.

#### Section 19. Additional Standards for Recreation Facilities Development.

(1) Development of commercial or private recreational facilities within a wild river corridor shall be consistent with wild river management plans, and buildings and other structures shall be located outside of buffer zones wherever possible.

(2) Recreation facilities shall be primitive in design and appearance and constructed of natural or natural-appearing materials that blend with the surroundings.

(3) Recreation facilities shall be designed so as to require minimal ground disturbance and removal of vegetation.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the change of use permit standards necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation establishes the change of use permit standards necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250. It provides for a clear understanding of the standards and clarifies specific for underground mining, selective cutting of timber and agriculture.

(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 makes changes to the administrative regulation related to the passage of SB 129. It provides for a clear understanding of the standards and clarifies specific for underground mining, selective cutting of timber and agriculture.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the administrative regulation to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to the landowners that have a wild rivers corridor on their property.

(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 will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name and correcting citations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENERGY AND ENVIRONMENT CABINET  
Office of Kentucky Nature Preserves  
(Amendment)**

**418 KAR 1:010. Definitions for 418 KAR Chapter 1.**

RELATES TO: KRS 146.550-146.570, 446.010(18)

STATUTORY AUTHORITY: KRS 146.550-146.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. KRS 146.560(2) also requires the board to promulgate administrative regulations on land acquisition. This administrative regulation defines terms used in 418 KAR Chapter 1.

**Section 1. Definitions.**

(1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land and includes options, appraisals, maps, surveys, title opinions, title insurance and environmental audits, and inspections.

(3) "Administration" means activities conducted by the Office of Kentucky Nature Preserves to accomplish the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses reasonable operating costs, consultant and contractor fees, and staff and equipment costs for approved activities including project development, application, conservation easement, deed restriction, and management plan assessment, implementation and enforcement, and biological inventories of fund projects.

(4) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including:

(a) Large tracts of contiguous forest;

(b) Wooded greenspace areas;

(c) Shallow open water habitats with expansive areas of shoreline;

(d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps;

(e) Natural or restored grasslands; and

(f) Riparian corridors.

(5)[(4)] "Board" means the Kentucky Heritage Land Conservation Fund Board.

(6)[(5)] "Buffer land" means land that will aid in protecting the project site from harm or will prevent degradation of the visitor experience at the project site.

(7)[(6)] "Chair" means the chairperson of the board.

(8)[(7)] "Dollar for dollar" means that for every Kentucky Heritage Land Conservation Fund dollar granted by the board, the applicant spends an equal amount[~~and that the applicant places all matching funds in one (1) lump sum into escrow~~] at the board's direction.

(9)[(8)] "Fund" means the Kentucky Heritage Land Conservation Fund.

(10)[(9)] "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(4)(f).

(11)[(10)] "Greenspace" means undeveloped land in or around urban areas, including forests or other natural vegetation, stream-side corridors, natural areas, and abandoned rights-of-way.

(12)[(11)] "Local governments" means county governments, municipalities, school districts, and special districts, or a combination thereof.

(13) "LTO" means Private, nonprofit land trust organization as defined in subsection (19) of this section.

(14)[(12)] "Management" means the stewardship necessary to fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses site development costs and reasonable operating costs, consultant and contractor fees, facility development, supplies, materials, site-specific equipment, and staff costs.

(15)[(13)] "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains or has reestablished to some degree, in the judgment of the office, its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest. [an area of land or water, or of both land and water, which:

(a)~~Retains or has reestablished in the judgment of the board its natural character;~~

(b)~~Has natural flora or fauna; or~~

(c) ~~Has biological, ecological, geological, scenic, or archaeological features of scientific, aesthetic, cultural, or educational interest to the public.~~

(14) "Natural functions" means ~~the interrelationships among the living and nonliving components of ecosystems and includes:~~

(a) ~~Energy fixation and conversions;~~

(b) ~~Ecosystem productivity and biomass accumulation;~~

(c) ~~Nutrient cycling;~~

(d) ~~Storage, transport, release, and retention of water and other nutrients;~~

(e) ~~Food web relationships and dynamics;~~

(f) ~~Weathering, development, and stabilization of substrates; and~~

(g) ~~Absorption and neutralization of pollutants.]~~

(16)[(15)] "Natural state" means the condition of an area that retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

(17)[(16)] "Outdoor recreation" means activity on a subject property that does not cause harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.

(18) "Office" is defined by KRS 146.415(4).

(19)[(17)] "Private, nonprofit land trust organization" [or "LTO"] means a group with Internal Revenue Code 501(c)(3) status qualified to hold land and easements for land conservation purposes.

(20) "Rare and endangered species" means those plants and animals identified as such by the Office of Kentucky Nature Preserves in accordance with 400 KAR 2:080 Section 6 and 400 KAR Chapter 3.

(21)[(18)] "RMP" means resource management plan.

~~(22)~~~~(19)~~ "State agency" means any department, program, cabinet, institution, board, commission, office, or agency of the Commonwealth of Kentucky.

~~(23)~~~~(20)~~ "State colleges and universities" means accredited colleges and universities located in the Commonwealth of Kentucky.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 418 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define certain essential terms used in the Kentucky Heritage Land Conservation Fund Board administrative regulations to provide clarity to the chapter's administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.550 to 146.570 establishes the Kentucky Heritage Land Conservation Fund Board. Senate Bill 129 provides for the administration of the Wild Rivers System to the Office of Kentucky Nature Preserves.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 146.560(2) authorizes the office to develop administrative regulations as are deemed necessary for application for funds from the agencies and private, nonprofit land trust organizations identified in KRS 146.570.

(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 makes changes to the administrative regulation related to the passage of SB 129. It also provides definition clarification for natural areas and rare and endangered species.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the definitions to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to government agencies, state parks, and some college and universities that manage properties funded with monies from the Heritage Land Conservation Fund.

(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 will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name and correcting citations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.560(2)

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.



(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENERGY AND ENVIRONMENT CABINET  
Office of Kentucky Nature Preserves  
(Amendment)**

**418 KAR 1:020. Administrative procedures of the board.**

RELATES TO: KRS 61.805-61.850, 61.870-61.884, 146.550-146.570[.]

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes those procedures.

**Section 1. Meetings.**

(1) Regular meetings. The board shall meet quarterly at times and places designated by the chair. The board shall provide for a yearly schedule of regular meetings pursuant to KRS 61.820.

**(2) Special meetings.**

(a) If a regular meeting is rescheduled, the board shall provide written notice of the rescheduled meeting pursuant to KRS 61.823(3) through (4).

(b) The chair or a majority of the members of the board may call a special meeting. The board shall provide written notice of a special meeting pursuant to KRS 61.823(3) through (4), unless the meeting is an emergency meeting, in which case the board shall comply with the notice requirements of KRS 61.823(5).

(3) Closed sessions. Deliberations on the future acquisition of land may be closed to the public when publicity would be likely to affect the value of the land. Sessions may also be closed to the public for any other reason permitted by KRS 61.810. The board shall meet the requirements for closed sessions set forth in KRS 61.815.

**Section 2. Quorum.**

(1) ~~Five (5)~~~~[Seven (7)]~~ members of the board shall be required to constitute a quorum of which:

(a) ~~Two (2)~~~~[Three (3)]~~ shall be members pursuant to KRS 146.560(1)(a) through (e); and

(b) ~~Three (3)~~~~[Four (4)]~~ shall be members pursuant to KRS 146.560(1)(f) through (k).

(2) The board shall act by a majority of those present at the meeting and constituting a quorum.

**Section 3. Meeting Participation.**

(1) A board member may participate in a meeting in person or by video teleconference pursuant to KRS 61.826.

(2) The designation of a board member pursuant to KRS 146.560(1)(a) through (e) shall be in writing and shall be submitted to the chair prior to the first meeting the designee attends. If the requirements of this subsection are not met, the designee shall not be permitted to vote.

**Section 4. Meeting Minutes, Annual Report.** (1) Meeting minutes. Minutes of each meeting of the board shall be prepared and ~~sent~~~~[mailed]~~ to each member of the board. Except for a closed session meeting, the minutes shall be provided to an interested party upon written request to the board in accordance with the requirements of KRS 61.872(2).

(2) Annual report. An annual report of the activities of the board for the previous year shall be prepared. This report shall include a cumulative list of all approved projects and a brief status report of ~~[all]~~ areas acquired through the Fund the previous fiscal year. The board shall submit the annual report to the Legislative Research Commission by October 1 of each year. Upon receipt of the annual report, the Legislative Research Commission may publish it in the Legislative Record or other appropriate publication.

**Section 5. Officers.** The board shall annually nominate and elect a vice-chair and a treasurer. The vice-chair shall preside over meetings in the absence of the chair. The treasurer, which shall be a member appointed pursuant to KRS 146.560(1)(f) through (k), shall monitor and report disbursements and receipts.

**Section 6. Committees.**

(1) There shall be two (2) standing committees, a projects review committee and a stewardship committee. The chair, with board approval, may also create other committees for specific purposes and a definite term.

**(2) The projects review committee:**

(a) Shall, through the administration of the office:

1. Review project applications submitted in accordance with 418 KAR 1:040;

2. Determine the compliance of an application with the four (4) priorities for acquisition set forth in KRS 146.560(2)(a) through (d);

3. Determine completeness and accuracy of an application; and

4. Prepare and submit a report of its findings to:

a. Each individual board member at least fifteen (15) days prior to a meeting at which the application will be considered by the board; and

b. The applicant;

(b) May:

1. Assist an applicant in the preparation of an application; and

2. Contact an applicant before the due date of a report to correct a minor deficiency in the application.

(3) The stewardship committee shall, through the administration of the office:

(a) Review and make recommendations to the board regarding preliminary and final RMPs; and

(b) Ensure that the management of land purchased, in whole or in part, with Fund money meets the requirements of:

1. KRS 146.550 through 146.570;

2. 418 KAR Chapter 1;

3. A written~~[memorandum of]~~ agreement between the board and a recipient of Fund money;

4. A conservation easement or deed restriction held by the Commonwealth through the board for the use and benefit of the citizens of the Commonwealth in a manner consistent with KRS 146.550 through KRS 146.570 and the purposes for which the property was acquired;~~and~~

5. The latest RMP approved by the board; and ~~[.]~~

6. Any other written restrictions, easements, or articles of dedication approved by the board.

(4) A committee shall include at least three (3) members, two (2) of whom are board members, one having been appointed to the board by the Governor of Kentucky or specified by KRS 146.560(1)(f) - (k). The chair shall appoint committee members and a committee chair, and shall be a voting ex officio member of each committee. The board member representing the office or proxy shall be an ex officio member of each committee due to the administration of the fund program by the office.

(5) A majority of the members of a committee shall constitute a quorum. A committee shall act by a majority of those present at a meeting at which a quorum is present.

(6) Committee membership shall be established at the first~~[last]~~ meeting of each fiscal~~[calendar]~~ year.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes those procedures.

(b) The necessity of this administrative regulation: This regulation is necessary to establish meeting protocols for the application of funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing meeting protocols for the application of funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land.

(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 makes changes to the administrative regulation related to the passage of SB 129. It changes the definition of a quorum from seven (7) to five (5) members. It makes the Office of Kentucky Nature Preserves (OKNP) an ex-officio member due to OKNP's administrative responsibilities to the Board. It changes the committee membership from the last meeting of the fiscal year to the first meeting.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the administrative regulation to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to government agencies,

state parks, and some college and universities that manage properties funded with monies from the Heritage Land Conservation Fund.

(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 will need to be taken to comply with this amendment. The amendments simply makes definitional changes to conform with the reorganization amendments from SB 129. However, reducing the number of members in the definition of quorum will make it easier to get a quorum and conduct business of the board.

(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 these amendments. The information is essentially the same except for the changing of the agency name and the change to the definition of quorum.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency benefit will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.560

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for

subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENERGY AND ENVIRONMENT CABINET  
Office of Kentucky Nature Preserves  
(Amendment)**

**418 KAR 1:040. Grant applications.**

RELATES TO: KRS 146.550-146.570, 382.800-382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the procedures for review and approval of grants funded to state agencies, local governments, and state colleges and universities pursuant to KRS 146.570(4)(a)-(f).

**Section 1. Application.**

(1) A state agency, local government, state college or university, or LTO seeking a grant pursuant to KRS 146.570(4)(f) shall submit to the board a completed grant application package.

(2) The application package shall include:

(a) A cover letter;

(b) The Kentucky Heritage Land Conservation Fund Board Grant Application Form, HL-1A;

(c) Location map;

(d) Site or project description;

(e) Preliminary Resource Management Plan, HL-1C, using the Preliminary Resource Management Plan Instructions, HL-1B;

(f) Copy of the portion of a 1:24,000 topographical map showing the approximate project boundaries; and

(g) Project costs worksheet.

(3) Money expended by an applicant in connection with a denied application for funds, a grant, or project under this section shall not be reimbursed to the applicant.

(4) An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.

(5) Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

**Section 2. Review of Application.**

(1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Section 6(2)(a), each board member shall review the application package and evaluate it based on the following criteria:

(a) If the fund contains adequate money to fund the proposed project;

(b) If the proposed project meets one (1) or more of the priorities for acquisition listed in KRS 146.560(2)(a) through (d);

(c) If the proposed acquisition is one (1) of the areas referred to in KRS 146.565;

(d) The completeness and accuracy of the application package;

(e) If the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(f) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(g) The significance of the natural and educational resources on the project site;

(h) The prevalence of this type of project and project site in

public systems; and

(i) The threat of loss or degradation of the project site if not protected.

(2) The board:

(a) Shall approve or deny a grant application by the vote of a majority of those present at a meeting at which there is a quorum; and

(b) May amend or attach conditions to the approval of a grant application.

(3) Consideration of a grant application may be carried over from meeting to meeting and the board may decline to approve a grant application at a given meeting.

(4) The board may, itself or through the office~~[an agent]~~, verify the accuracy of the information in a grant application and make further investigation of the merits of a proposed acquisition.

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written~~[memorandum of]~~ agreement with the board that requires the applicant to comply with:

(1) The requirements of KRS 146.550 through 146.570;

(2) 418 KAR Chapter 1;

(3) The application;

(4) A conservation easement or deed restriction that pertains to the project site; and

(5) The latest RMP approved by the board.

**Section 4. Incorporation by Reference.**

(1) The following material is incorporated by reference:

(a) "Kentucky Heritage Land Conservation Fund Board Grant Application Form", HL-1A, July 2018~~[June 2013]~~;

(b) "Preliminary Resource Management Plan Instructions", HL-1B, July 2018~~[July 2012]~~; and

(c) "Preliminary Resource Management Plan Template", HL-1C, July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 375 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the grant process for a state agency, local government,

state college or university, or LTO seeking a grant pursuant to KRS 146.570(4).

(b) The necessity of this administrative regulation: This regulation is necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the grant application procedures necessary for review and approval of projects and grants, and acquisition of land.

(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 makes changes to the administrative regulation related to the passage of SB 129.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the reorganizational changes from SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making conforming changes related to amendments to the authorizing statutes related to the passage of SB 129.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the administrative regulation to match the amendments to the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to government agencies, state parks, and some college and universities that manage properties funded with monies from the Heritage Land Conservation Fund.

(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 will need to be taken to comply with this amendment. The amendments simply makes conforming changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for amendments related to the passage SB 129.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

##### 418 KAR 1:050. Procedures for acquisition of land.

RELATES TO: KRS 45.450, 146.550-146.570, 382.800-382.860

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations on acquisition of land. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

Section 1. An applicant shall attempt to acquire:

(1) Land at or[a-price] below its fair market value; and

(2) Available matching funds for the purchase of land and land management from a public or private entity.

Section 2. Transfer of Funds. An expenditure approved by the board shall be disbursed[promptly] after a written agreement[~~Memorandum of Agreement~~] has been signed by the grant applicant and the board, through its chair, and all procedures in 418 KAR 1:040 and in the application have been followed.

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. If the requirements of an agreed upon MOA required by 418 KAR

1:040, Section 3, have been met, then an extension may be granted by the board upon receipt of a written request for extension.

Section 4. Verification.

(1) Within ninety (90) days of purchase, a recipient of fund money shall provide to the board, a copy of the recorded deed of conveyance for land acquired.

(2) The deed shall indicate:

(a) That it has been filed of record in the courthouse of the county where the real estate is located; and

(b) The amount of consideration paid for the real estate, in accordance with KRS 45.450.

Section 5. Deed Restriction. A state agency that has been awarded grant funds pursuant to KRS 146.570(4) shall include in all deeds conveying ownership of property to that agency, as grantee, the following language: "Grantor and grantee hereby acknowledge that a source of funding for the purchase of the property is the Kentucky Heritage Land Conservation Fund, and that as consideration for receiving said funding, Grantee, including its successors and assigns, is required to maintain the property in perpetuity in accordance with the purpose, intent and requirements of the Kentucky Heritage Land Conservation Fund set forth at KRS 146.570 and 418 KAR Chapter 1. Grantee, including its successors and assigns, further acknowledges that it is prohibited from selling, exchanging, encumbering or disposing of any interest in the property without the prior written consent of the Kentucky Heritage Land Conservation Fund, its successors and assigns, and the Kentucky Finance and Administration Cabinet, and that the Grantee, including its successors and assigns, shall ensure that any future owner of the property agrees in writing to be bound in perpetuity to the same restrictions and terms as stated herein."

Section 6. Conservation Easements.

(1) A local government, state college, state university, or LTO that has been awarded grant funds pursuant to KRS 146.570(4)(f) shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds.

(a) This conveyance shall occur simultaneously with the conveyance of the property to the applicant.

(b) The conservation easement shall meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.

(2) Matching funds.

(a) No later than ninety (90) days after board approval of an application from an LTO, the applicant shall deposit into a ~~designated non-lapsing escrow~~ account the matching funds required by KRS 146.560(2)(d). The board shall ~~rescind~~ deny a grant application submitted by an LTO if the LTO fails to deposit the matching funds required by KRS 146.560(2)(d) prior to acquiring the property.

(b) An LTO shall submit to the board for prior review and approval instructions for the disbursement of matching funds ~~from the escrow account~~, and shall ensure in writing that matching funds remain dedicated to the project ~~the escrow account remains open~~ until all disbursements have been made.

(c) A final report detailing each disbursement ~~from the account~~ shall be provided to the board within sixty (60) days of the final disbursement.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to govern the acquisition of land purchased, in whole or in part, with fund money.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations on acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides for the procedures necessary for the acquisition of land.

(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 makes changes to the administrative regulation to clarify acquisition, transfer of funds, deadline, verification, deed requirements, conservation easements, and matching funds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with amendments to KRS 146.550 to KRS 146.570.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations on acquisition. These amendments are being promulgated to comply with the amendments in the statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make conforming changes to the administrative regulation to match the amendments to the authorizing statutes. The amendments also relate to escrow accounts for conservation easements

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to government agencies, state parks, and some college and universities that manage properties funded with monies from the Heritage Land Conservation Fund.

(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 will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129 as well as to make changes to the conservation easement process. Escrow accounts are no longer required.

(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 these amendments. The amendments make conforming changes as well as removing the requirement for an escrow account to be used.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are related to the passage of SB 129 and makes amendments to remove the requirement to use escrow accounts. This same requirement applies to all conservation easements.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.485

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 418 KAR 1:060. Management.

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, and review and approve of projects and grants. This administrative regulation establishes the procedures for management of land acquired with fund money.

Section 1. Purpose. Each recipient of fund money shall maintain in perpetuity for the purposes set forth in KRS 146.560 land acquired with fund money. Management practices shall also meet the requirements of KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient of fund money, any conservation easement or land use restrictions pertaining to the project site, and the most recent RMP approved by the board.

Section 2. Preliminary RMP. An applicant for fund money shall submit to the board a preliminary RMP simultaneously with an application submitted pursuant to 418 KAR 1:040. The applicant shall follow the preliminary RMP instructions incorporated by reference in 418 KAR 1:040, Section 4 as HL-1B and HL-1C

#### Section 3. Final RMP.

(1) A recipient of fund money shall submit to the board, within two and one-half (2 1/2) years of receipt of funding, a final RMP which is consistent with the preliminary RMP and application, and which meets the requirements of KRS 146.550 through 146.570, this chapter, any memorandum of agreement between the board and the recipient, and any conservation easement, deed restriction, or articles of dedication which pertains to the project site. The applicant shall follow the final RMP instructions incorporated by reference as Forms HL-2A and HL-2B in Section 14 of this administrative regulation.

(2) The applicant shall develop the final RMP using the findings contained in biological and archeological inventories. The board may grant an exception to the inventory requirements if the applicant demonstrates that either inventory would be nonproductive considering the conditions at the project site. The reports shall be done to the standards established by the board at the first meeting of each fiscal year.

(3) The board shall vote to accept or reject the final RMP. If it is rejected, the board shall identify the deficiencies and notify the applicant of those deficiencies. The applicant shall correct these deficiencies within sixty (60) days of notification from the board or other time deadline approved by the board.

Section 4. Land acquired, in whole or in part, with money from the fund shall be managed in accordance with the requirements of KRS 146.550 to 146.570, the most recent RMP approved by the board, any conservation easement or deed restriction pertaining to the site, any articles of dedication pertaining to the project site, and this chapter.

Section 5. Amendment of RMPs. RMPs may be amended only upon prior written board approval. Until board approval of an amendment is obtained, the recipient of fund money shall adhere to the most recent RMP approved by the board.

Section 6. Management Agreements. A recipient of fund money may, with prior approval of the board, enter into agreements with third parties for management of land. Despite the terms of any management agreement, the recipient of fund money retains full responsibility for management of the land in accordance with the requirements of KRS 146.550 through 146.570, this chapter, any memorandum of agreement between the board and the recipient, any conservation easement or deed restriction pertaining to the project site, any articles of dedication pertaining to the project site, and the most recent RMP approved by the board.

Section 7. Time Limits. Money initially approved by the board for management shall be expended within two and one-half (2 1/2)



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years of the board's approval of the Final RMP. An extension may be granted by the board upon receipt of a written request for extension, including an explanation of and reason for the request.

### Section 8. Application for Additional Management Funds.

(1) The board may, at its discretion, grant written requests for additional management money.

(2) The board shall consider the following factors in its evaluation of requests for additional management money:

- (a) The applicant's past management record;
- (b) The applicant's need for additional management funds; and
- (c) Funds available.

Section 9. Joint RMPs. Applicants may submit joint RMPs which specify which entity will perform each aspect of management. Each applicant shall remain responsible for all aspects of management.

### Section 10. Reports.

(1) Recipients of fund money shall submit to the board Annual Management Reports using Form HL-2C, which is incorporated by reference in Section 14 of this administrative regulation detailing:

- (a) The status of the project;
- (b) The applicant's compliance with the most recent RMP approved by the board; and
- (c) The status of any final RMP that has yet to be submitted to, or approved by, the board.

(2) Management reports shall be submitted annually[~~State agency reports are due on or before the date of the first board meeting of the year. Local government and state college and university reports are due~~] on or before the date of the third board meeting of the year.

Section 11. Verification. Recipients of fund money shall provide to the board, along with their annual report, verification of money expended on land management upon the request of the board through the office.

Section 12. Transfer or Encumbrance of Land. Recipients of fund money shall not, without prior board approval, sell, give, devise, or otherwise convey or encumber land acquired, in whole or in part, with fund money.

Section 13. Identification. The project site shall be identified by one (1) or more signs, and literature or advertising, where appropriate, shall also identify the site as having been purchased with money from the fund.

### Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Final Resource Management Plan Instructions", HL-2A, July 2018[~~July 2012~~];

(b) "Final Resource Management Plan", HL-2B, July 2012; and

(c) "Annual Management Report", HL-2C, July 2018[~~July 2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Heritage Land Conservation Fund, 300 Sower Blvd[~~375 Versailles Road~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be

heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for management of land acquired with fund money.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for management of land acquired with fund money.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, and review and approve of projects and grants. This administrative regulation establishes the procedures for management of land acquired with fund money.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the grant application procedures necessary for management of land acquired with fund money in accordance with the requirements of KRS 146.550 to 146.570. It sets reporting 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 amendments make changes to the administrative regulation to clarify procedures necessary for management of land acquired with fund money in accordance with the requirements of KRS 146.550 to 146.570. The amendments also set reporting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 146.550 to KRS 146.570 related to the changes from the passage of SB 129.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, and review and approve of projects and grants. These amendments conforms to the amendments to the authorizing statutes due to the passage of SB 129.

(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 amending the regulation to comply with the amendments to the authorizing statutes as a result of the passage of SB 129.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to government agencies, state parks, and some college and universities that manage properties funded with monies from the Heritage Land Conservation Fund.

(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 will need to be taken to comply with this amendment. The amendments simply makes changes to conform with the reorganization amendments from SB 129.

(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 these amendments. The information is essentially the same except for the changing of the agency name and incorporating new forms that were amended as a result of the passage of SB 129.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments are strictly related to the reorganization resulting from the passage of SB 129.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.560(2)

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Office of Kentucky Nature Preserves (Amendment)

#### 418 KAR 1:070. Remedies.

RELATES TO: KRS 146.550-146.570

STATUTORY AUTHORITY: KRS 146.560(2), 146.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, review and approval of projects and grants, and acquisition of land. This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management, in accordance with KRS 146.560.

#### Section 1. Forfeiture of Funds.

(1) (a) Except as provided by paragraph (b) of this subsection, funds approved by the board pursuant to KRS 146.570(4)(f) for land acquisition which, within two (2) years of board approval, are not expended on acquisition of approved land shall revert to the fund.

(b) The board may grant an extension upon receipt of a written request.

(2) (a) Except as provided by paragraph (b) of this subsection, funds initially approved by the board for management pursuant to KRS 146.570(4)(f) which, within two and one-half (2 1/2) years of receipt of funds from the board, are not expended on management of approved land shall revert to the fund unless otherwise approved by the board.

(b) The board may grant an extension upon receipt of a written request.

Section 2. Forfeiture of Land. (1) Land acquired with fund money shall be subject to forfeiture. The board may initiate legal proceedings for forfeiture if any of the following occurs:

(a) Failure to maintain and manage land acquired with fund proceeds for the purposes established in KRS 146.560(2)(a)-(d);

(b) Violation of a memorandum of agreement between the board and the recipient of fund money;

(c) Violation of the terms of a conservation easement pertaining to land purchased, in whole or in part, with fund proceeds;

(d) Falsification of information or inaccurate information in the grant application;

(e) Failure to provide, within ninety (90) days of acquisition, verification of land acquisition and money expended for acquisition;

(f) Falsification of information or inaccurate information in the preliminary or final RMP;

(g) Failure to adhere to, or implement, the most recent RMP which has received board approval;

(h) Failure to submit a final RMP to the board within two and one-half (2 1/2) years of receipt of funds from the board;

(i) Expenditure of fund money on anything other than items which have received prior board approval;

(j) Failure to provide verification of money expended on management of the land, unless the recipient has requested and received an extension of time. The board may grant an extension upon receipt of a written request;

(k) Failure to submit reports to the board pursuant to 418 KAR 1:060, Section 10;

(l) An attempt to transfer land in violation of 418 KAR 1:060, Section 12; or

(m) Dissolution of the recipient entity.

(2) Land forfeited pursuant to this administrative regulation shall be transferred to an appropriate land management entity, as designated by the board. Forfeited land shall continue to be managed in accordance with 418 KAR 1:060, Section 1.

Section 3. Remedies. The board may utilize all remedies available to it by law, including an injunction and restraining order

to enforce the provisions of KRS 146.550 through 146.570, 418 KAR Chapter 1, and any other applicable laws of the Commonwealth of Kentucky; any application submitted to the board; any memorandum of agreement between the board and a recipient of fund money; any conservation easement or deed restriction, or articles of dedication which pertains to land purchased, in whole or in part, with fund money; and any RMP approved by the board.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 6, 2018

FILED WITH LRC: November 6, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [michael.mullins@ky.gov](mailto:michael.mullins@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management, in accordance with KRS 146.560.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to address the potential forfeiture of funds or lands and provide remedies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.560(2) requires the board to promulgate administrative regulations necessary for the application for funds from agencies identified in KRS 146.570, and review and approve of projects and grants. This administrative regulation establishes the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management, in accordance with KRS 146.560.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 146.560(2) authorizes the office to develop administrative regulations as are deemed necessary for application for funds from the agencies and private, nonprofit land trust organizations identified in KRS 146.570. This administrative regulation assists in the effective administration of the statute by establishing the requirements for maintaining land acquired with fund money and enables the board to ensure that fund money is used for acquisition and management.

(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 makes a clarification that the board can approve funds not expended within two and one-half years to not revert to the fund. The administrative regulation is also amended to include deed restriction as an enforcement mechanism.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify language in the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by making amendments to the administrative regulation in order to clarify language in the administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by adding language that clarifies the office's authority pertaining to land acquired and managed using Heritage Land Conservation Fund monies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make conforming changes related to the amendments to the authorizing statutes. The amendments will apply to government agencies, state parks, and some college and universities that manage properties funded with monies from the Kentucky Heritage Land Conservation Fund.

(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 will need to be taken to comply with this amendment. The amendments simply makes clarifies authorities held by the board.

(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 these amendments. The information is essentially the same except for language added to clarify authorities held by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There could be minor benefits to the entity associated with complying with this amendment. An efficiency will be realized by the agency, which could potentially result in a more efficient process to the entity identified above.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to amend 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 involve any fees.

(9) TIERING: Is tiering applied? No, these amendments will be applied equally to all entities that use funds from the Kentucky Heritage Land Conservation Fund.

#### 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 Kentucky Nature Preserves will be impacted and could impact local governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.560(2)

(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? This amendment will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This amendment will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### **JUSTICE AND PUBLIC SAFETY CABINET (Amendment)**

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

RELATES TO: KRS 61.900-61.930

STATUTORY AUTHORITY: KRS. 61.904

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.904 authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations that are reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. This administrative regulation establishes the criteria and procedures required for filing and processing applications for commissions to be a special law enforcement officer.

Section 1. Definitions. (1) "Cabinet" means the Justice and Public Safety Cabinet.

(2) "SLEO Act" means the Special Law Enforcement Officer Act found in KRS 61.900 to 61.930.

(3) "SLEO program administrator" means the person designated or appointed by the Secretary of the Justice and Public Safety Cabinet to administer the Special Law Enforcement Officer Program whose address is: SLEO Program Administrator, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601.

Section 2. Qualifications to Apply for Commission as a Special Law Enforcement Officer. To qualify for a commission as a special law enforcement officer pursuant to KRS 61.900 to 61.930, an individual shall comply with the conditions and requirements set forth in KRS 61.906.

Section 3. Application for Commission as a Special Law Enforcement Officer. (1) An applicant shall meet all of the requirements of the SLEO Act before a commission is granted.

(2) An applicant shall provide to the governmental unit two (2) complete signed and notarized SLEO Application Forms (SLEO-1).

(3) The governmental unit shall submit both application forms to the Justice and Public Safety Cabinet SLEO Program Administrator.

(4) The application forms shall contain the following information:

(a) The name, address, telephone number, and detailed personal description of and information about the applicant; and

(b) All arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies as requested on the application and any other information necessary to conduct a criminal history check.

(5) Any false, misleading, or withholding of information requested on the application or by the cabinet investigator may be

grounds for rejection without further consideration.

Section 4. Additional Requirements. (1) In addition to the application form, an applicant shall provide to the governmental unit who shall submit to the SLEO Program Administrator the following with his or her application:

(a) A copy of the applicant's high school diploma or GED;

(b) A certified copy of the applicant's birth certificate;

(c) Two (2) recent photographs of the individual (full face) measuring not larger than three (3) inches by five (5) inches and taken within the last thirty (30) days of the date the application is submitted;

(d) If the applicant is a veteran, a copy of his or her military release (Form DD-214);

(e) An Authority to Release Information Form, SLEO-2, which allows the release of all necessary information to the SLEO program administrator. It shall be signed by the applicant and witnessed by a second person;

(f) A Letter of Intent Form, SLEO-3, completed by the governmental unit giving the name of the applicant, the specific public property to be protected, and the signature of the authorizing official of the requesting governmental unit;

(g) Proof that the applicant has completed a recognized course and is certified in first aid and CPR. This requirement may be waived if the agency hiring the applicant has full-time EMT's on staff; and

(h) The application fee.

(2) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.

(3) The applicant shall arrange for and be interviewed by the SLEO program administrator before a commission is granted.

(4) All SLEO applicants shall sign and the governmental unit shall submit to the cabinet the SLEO Acknowledgement Notice Form, SLEO-4, which indicates that he:

(a) Has received, read, and understands:

1. Provisions of the SLEO Act, KRS 61.900-61.930;

2. Administrative regulations in 500 KAR Chapter 2;

3. Penalties imposed for violating the SLEO Act and its administrative regulations; and

4. KRS 61.300, 61.990, 61.991, 62.010, and 62.990;

(b) Acknowledges that his authority is limited and restricted under the SLEO Act; and

(c) Understands and acknowledges that his commission as a SLEO does not give him the right or authority to carry a concealed weapon off the premises of the public property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110 or meets the requirements of 18 U.S.C. 926B or 926C.

Section 5. Fees. (1) All fees required by KRS 61.908 shall be paid in advance and are nonrefundable.

(2) Fees shall be paid in the form of a check or money order payable to the Kentucky State Treasurer.

Section 6. Approval of Application. (1) If the applications and all required documents are in order, and if the criminal history information record review and background investigation are favorably completed, the governmental unit for whom the SLEO applicant will be employed shall notify the Department of Criminal Justice Training concerning any training the applicant needs in order to satisfy the requirements of KRS 61.906(2)(f).

(2) In notifying the Department of Criminal Justice Training, the governmental unit shall describe the training needed by the applicant. The Department of Criminal Justice Training shall schedule and conduct the training and collect the related fees as prescribed in KRS 61.908(3), (4), and (5). An applicant who has successfully completed the training previously shall not be required to repeat the course.

(3) The Department of Criminal Justice Training shall notify the governmental unit of the results of the training upon completion.

Section 7. Receipt of Defective or Falsified Application. (1) If

the application is defective or in conflict with the SLEO Act or its administrative regulations, 502 KAR Chapter 2, the cabinet shall notify the governmental unit.

(2) An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the applicant is sent notice of the deficiencies by the program administrator.

(3) An application that has been falsified or contains material omissions or contains incomplete information may be rejected and the applicant shall be prohibited from submitting an application for commission as a SLEO for one (1) year.

Section 8. The Grant of the Commission and the Required Oath of Office. (1) A commission for a special law enforcement officer shall be validated and granted as follows:

(a) If the applicant has successfully satisfied the requirements of the act and a commission has been recommended, a commission certificate and the recommendation shall be forwarded by the SLEO program administrator to the secretary or the secretary's designee for review.

(b) After the commission is issued by the secretary, or the secretary's designee a copy of the commission shall be placed in the officer's file maintained by the cabinet.

(2) The governmental unit shall be notified that the commission has been granted.

(a) One (1) of the original applications and two (2) County Clerk Oath verification forms (SLEO-6) shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(b) The governmental unit shall arrange for the appointed applicant to take the oath of office.

(3) The appointed applicant shall take:

(a) One (1) of the applications and the two (2) County Clerk Oath verification forms to the county clerk in the county where the applicant is to serve; and

(b) The constitutional oath of office within thirty (30) days after notice of appointment.

(4) The county clerk shall then:

(a) Complete and sign the clerk's attestation on both SLEO-6s;

(b) Retain the application and one (1) of the County Clerk Oath verification forms, for filing purposes in the county clerk's office; and

(c) Give the second County Clerk Oath verification form, signed by the clerk, to the applicant.

(5) The applicant shall return the second County Clerk Oath verification form, signed by the Clerk, to the governmental unit. The governmental unit shall return it to the cabinet SLEO program administrator within thirty (30) days to indicate that the oath was administered and that the application and oath verification form are filed with the county clerk.

(6) Upon receipt of the oath verification, the commission certificate shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(7) If the second County Clerk Oath verification form, signed by the clerk, is not returned within thirty (30) days, the commission shall be null and void and the applicant shall be required to repeat the application process.

(8) The applicant shall not exercise the authority of a SLEO until the governmental unit has received the commission certificate from the cabinet.

(9) The commission certificate shall be kept by the governmental unit so long as the officer is employed or until his or her authority is terminated by action of the government unit ~~or~~ the cabinet secretary or the cabinet secretary's designee.

(10) The SLEO Commissions shall be issued for a period of two (2) years if the officer continues to meet all statutory and regulatory criteria.

(11) After the governmental unit has received the SLEO commission certificate, the governmental unit shall issue an identification card which is to be carried by the SLEO officer whenever he or she is acting under the authority of KRS 61.900-61.930.

(12) The identification card shall be:

(a) Presented as requested by any duly sworn peace officer or

cabinet official;

(b) Subject to control by the cabinet; and

(c) Comply with the provisions of Section 11(5) of this administrative regulation.

(13) If for any reason a SLEO officer is terminated or otherwise relieved of his duties as a SLEO officer by the governmental unit or the cabinet, he or she shall immediately return this identification card to the officer's governmental unit.

(14) The SLEO commission certificate shall be held by the governmental units and shall:

(a) Be available for inspection by the cabinet program administrator or his designee;

(b) Remain the property of the cabinet; and

(c) Be returned upon the officer's authority being withdrawn for any reason.

Section 9. Special Provisions. (1) Special Local Peace Officers meeting the requirements of KRS 61.906(2)(f)3 may apply for commission as a SLEO in the following manner:

(a) An official for the governmental unit shall sign and submit a new set of applications with the filing fee on behalf of the applicant; and

(b) The applicant shall undergo a current background investigation.

(2) Training waiver. A SLEO applicant may apply for a training waiver by providing sufficient proof of past police experience, or military records, or examination records, that substantiates that the applicant meets the waiver requirements set forth in KRS 61.906(2)(f)2.

Section 10. Renewals. (1) A letter of intent from the governmental unit stating its request to renew a commission and two (2) complete signed and notarized SLEO Renewal Application Forms (SLEO-5) for each individual involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission.

(2) The applicant for renewal shall undergo a background investigation to bring his records up-to-date.

Section 11. Governmental Units Employing SLEO Officers - Records, Reports, and Responsibility.

(1) All governmental units employing SLEO officers shall:

(a) Keep their files current as to the expiration date on each officer's commission;

(b) Keep the individual officer's commission certificates on file, to be returned to the cabinet upon termination of the officer and his authority;

(c) Provide proof to the SLEO program coordinator at the time of request for renewal that its SLEOs:

1. Are currently certified in First Aid and CPR unless this requirement is waived pursuant to Section 4(1)(g) of this administrative regulation; and

2. Have met the same marksmanship qualification required of certified peace officers in KRS 15.383; and

(d) Mail or email to the SLEO program administrator by June 30 of each year:

1. A current list of all active SLEO personnel; and

2. The number of arrests made or citations issued by the agency the previous calendar year.

(2) The unit shall post a copy of the SLEO administrative regulations, 500 KAR Chapter 2, and a copy of KRS 61.900-61.930, 61.990, and 61.991 of the SLEO Act in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLEO officers.

(3) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental unit whose public property is being protected by the SLEO officer involved except:

(a) The governmental unit shall notify the cabinet SLEO program administrator by:

1. Direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLEO officers; and

2. A follow-up written report to be filed with the SLEO program



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administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by governmental unit; and

(b) If formal charges are pending, the unit or agency shall advise the SLEO program administrator as to the specific charge, trial date, and the final disposition of the charge.

(4) The unit shall issue each SLEO officer an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches); and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Law Enforcement Officer (SLEO), pursuant to KRS 61.902. As a SLEO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the powers of a peace officer in accordance with KRS 61.900 to 61.930"; and

2. The other side containing a full-faced photograph of the officer with his or her:

a. Name;

b. Identification or notation that the officer has been commissioned a "Special Law Enforcement Officer";

c. Governmental unit employing the officer;

d. Badge number, if any; and

e. Signature of the officer's chief, supervisor, or employer.

(5) The unit shall obtain and destroy the identification card from any officer whose employment is terminated.

Section 12. Violations. (1) All governmental units utilizing SLEO's shall be subject to inspection and investigation by the Cabinet as circumstances may warrant for possible violations.

(2) Violations may result in prosecution and recommendation to the secretary of the cabinet or the secretary's designee that the commission be revoked.

Section 13. Revocation or Suspension of SLEO Commissions.

(1) A SLEO may have his or her commission suspended or revoked in accordance with KRS 61.910.

(2) The program administrator shall notify the secretary or the secretary's designee of any violations of KRS 61.910, who shall send written notice of the alleged violation to the:

(a) SLEO; and

(b) Governmental unit employing the SLEO.

(3) The notice of alleged violation shall be sent to the SLEO and employing governmental unit by certified mail, return receipt requested.

(4) The SLEO may request an administrative hearing before the secretary or the secretary's designee before suspension or revocation is imposed. The request for hearing shall be in writing and shall be received by the Secretary or the secretary's designee within thirty (30) days of receipt by the SLEO of the notice of intent to seek suspension or revocation.

(5) The secretary or the secretary's designee shall suspend or revoke the commission of a SLEO who fails to request an administrative hearing within the thirty (30) day time period.

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) The cabinet may temporarily suspend the commission of a SLEO prior to holding a hearing pursuant to KRS Chapter 13B if the cabinet believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the cabinet shall hold a Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLEO requests an extension for a time certain. If the SLEO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(8) If a SLEO commission is suspended or revoked:

(a) The SLEO program administrator shall notify the governmental unit involved to return the commission of the SLEO officer;

(b) The governmental unit responsible for the SLEO officer

shall forward a letter to the officer stating that:

1. His or her commission has been revoked or suspended; and

2. He or she shall immediately return the SLEO identification card to the governmental unit;

(c) Upon receipt of the card, the governmental unit shall destroy it; and

(d) The program administrator shall notify the county clerk in the officer's county of jurisdiction.

Section 14. Procedures for Investigating Complaints or Unusual Incidents Involving SLEO Officers.

(1) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental units whose public property is being protected by the SLEO officer involved. The governmental unit shall notify the cabinet of all incidents involving their SLEO personnel as required by Section 11(3) of this administrative regulation.

(2) The cabinet program administrator or other assigned officers may investigate any and all complaints or unusual incidents involving SLEO officers, if there is reason to believe the provisions of KRS 61.900-61.930, 61.990, 61.991, or 500 KAR Chapter 2, or other applicable laws or administrative regulations have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLEO officer involved.

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

(a) "SLEO Application Candidate Information Form", SLEO-1, July 1, 2010;

(b) "Authority to Release Information Form", SLEO-2, April 13, 2009;

(c) "Letter of Intent Form", SLEO-3, June 3, 2009;

(d) "SLEO Acknowledgement Notice Form", SLEO-4, August 10, 2009;

(e) "SLEO Renewal Application Form", SLEO-5, July 1, 2010; and

(f) "County Clerk Oath Form", SLEO-6, July 1, 2010.

~~[(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JOHN C. TILLEY, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: October 24, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2018. 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: Julie Foster, Attorney, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov), phone (502) 564-3279, fax (502) 564-6686.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Julie Foster

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides application process for Special Law Enforcement Officers (SLEO) to protect specific public property pursuant to KRS 61.900-930.



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The regulation further establishes the responsibilities of employing public agencies of SLEOs; renewals, suspension & revocation of SLEO commissions; and investigation of complaints or special incidents for SLEOs.

(b) The necessity of this administrative regulation: KRS 61.904 authorizes promulgation and enforcement of administrative regulations that are reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.904 authorizes regulations implementing SLEO application process. See response to a. and b.

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

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

(a) How the amendment will change this existing administrative regulation: Amendment permits designee to act on behalf of the Secretary of the Justice and Public Safety Cabinet (Secretary) with regard to SLEO commissions.

(b) The necessity of the amendment to this administrative regulation: The secretary is not always available to process, approve, suspend, and revoke SLEO commissions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.904 permits Secretary's designee to oversee the SLEO application process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment streamlines the SLEO commission process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property.

(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: Secretary's designee will be able to more quickly take action on SLEO applications.

(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 public entities and their applying employees will have to comply with the application process and other program requirements to be commissioned and renew commissions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are established by statute (KRS 61.908) and are not imposed by the regulation. There is a \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. The \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees are paid by the applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have a commissioned officer for their public property with law enforcement authority.

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

(a) Initially: The cost is part of the budget for the Justice and Public Safety Cabinet.

(b) On a continuing basis: The cost is part of the budget for the Justice and Public Safety Cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost is part of the budget for the Justice and Public Safety Cabinet.

(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 fees are established by statute (KRS 61.908) and are not imposed by the regulation.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: The fees are established in KRS 61.908.

(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) 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 Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.900-61.930

(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 fees are established by statute (KRS 61.908) and are not imposed by the regulation. There is a \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. The total cost would depend on the number of applicants.

(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 fees are established by statute (KRS 61.908) and are not imposed by the regulation. See above.

(c) How much will it cost to administer this program for the first year? The cost is part of the budget for the Justice and Public Safety Cabinet.

(d) How much will it cost to administer this program for subsequent years? The cost is part of the budget for the Justice and Public Safety Cabinet.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: The fees are established by statute (KRS 61.908) and are not imposed by the regulation.

### JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

#### 505 KAR 1:110. Department of Juvenile Justice Policy and Procedures Manual: program services.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 635.500, [635.505(7),] 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, [15A.305(5),] 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Program Services", November 8, 2018~~[October 15, 2015]~~ is incorporated by reference and includes the following:

- 300 Definitions (Amended 11/08/18~~10/15/15~~);
- 300.1 Programs and Services (Amended 11/08/18~~07/01/15~~);
- 300.2 Correspondence to the Court System (Amended 11/08/18~~10/15/15~~);
- 301 Intake and Orientation (Amended 11/08/18~~10/15/15~~);
- 301.1 Youth's Personal Property, Dress Code, and Facility Issued Property (Amended 11/08/18~~07/01/15~~);
- 301.2 Hair and Grooming (Amended 11/08/18~~07/01/15~~);
- 302 Individual Treatment Plan and Aftercare Plan (Amended 11/08/18~~10/15/15~~);
- 303 Treatment Team Composition, Function, and Responsibility (Amended 11/08/18~~07/01/15~~);
- 306 ~~[Treatment]~~ Track and Level System (Amended 11/08/18~~10/15/15~~);
- 307 Counseling Services (Amended 11/08/18~~10/15/15~~);
- ~~[308 — Advanced Care Unit (Amended 07/01/15);]~~
- 309 Family Engagement (Amended 11/08/18~~07/01/15~~);
- 310 Family and Community Contacts: Mail, Telephone, and Visitation (Amended 11/08/18~~07/01/15~~);
- ~~[311 — Cadet Leadership and Education Program (C.L.E.P.) (Added 10/15/15);]~~
- 314 Youth Council (Amended 11/08/18~~07/01/15~~);
- 315 Use of Non-Governmental Funds and Youth Activity Funds Account (Amended 11/08/18~~10/15/15~~);
- 316 Youth Allowances and Work Details (Amended 11/08/18~~07/01/15~~);
- 317 Recreation (Amended 11/08/18~~07/01/15~~);
- 318 Behavior Management (Amended 11/08/18~~07/01/15~~);
- 318.1 Graduated Responses, Sanctions, and Incentives (Amended 11/08/18~~10/15/15~~);
- 318.2 Disciplinary Review (Amended 11/08/18~~07/01/15~~);
- 319 Staff Requirements for the Supervision of Youth (Amended 11/08/18~~07/01/15~~);
- 319.1 Facility Capacities (Amended 11/08/18~~07/01/15~~);
- 320 Transportation of Youth (Amended 11/08/18~~07/01/15~~);
- 321 Incident Reporting (Amended 11/08/18~~07/01/15~~);
- 322 Drug Screening and Testing (Amended 11/08/18~~07/01/15~~);
- 323 Isolation (Amended 11/08/18~~10/15/15~~);
- 324 Restraints (Amended 11/08/18~~07/01/15~~);
- 325 Searches (Amended 11/08/18~~07/01/15~~);
- 326 Contraband, Seizure, and Chain of Custody (Amended 11/08/18~~07/01/15~~);
- 327 Escape and Absent Without Leave (Amended 11/08/18~~07/01/15~~);
- 328 Individual Client Records (Amended 11/08/18~~07/01/15~~);
- 329 Progress Notes (Amended 11/08/18~~07/01/15~~);
- 330 Log and Shift Reports (Amended 11/08/18~~07/01/15~~);
- 331 Grievance Procedure (Amended 11/08/18~~07/01/15~~);
- 332 Authorized Leave: Day Releases and Furloughs; Supervised Off-grounds Activities (Amended 11/08/18~~10/15/15~~);
- ~~[333 — Day Treatment Admissions (Amended 10/15/15);]~~
- 334 Youth Development Centers Educational and Vocational Programming, Assessment, and Transition (Amended 11/08/18~~10/15/15~~);
- ~~[334.1 Day Treatments: Educational Programming, Assessment, and Transition (Amended 07/01/15);]~~
- 334.2 Group Homes: Educational Services (Amended 11/08/18~~07/01/15~~);
- 335 Youth Development Center Educational and Vocational Records~~[- Day Treatment Educational Records]~~ (Amended 11/08/18~~10/15/15~~);
- 339 Youth Development Center~~[and Day Treatment]~~ Instructional Staffing (Amended 11/08/18~~07/01/15~~);
- 341 Youth Development Center~~[and Day Treatment]~~ Evaluation of Integrated Educational and Vocational Plan (Amended 11/08/18~~07/01/15~~);
- 343 Technical Education Safety (Amended 11/08/18~~07/01/15~~);
- 344 Library Services (Amended 11/08/18~~07/01/15~~);
- 345 Religious Programs (Amended 11/08/18~~07/01/15~~);

- 346.1 Youthful Offenders (Amended 11/08/18~~07/01/15~~);
- 347.1 Educational and Meritorious Good Time Credit for Youthful Offenders (Amended 11/08/18~~07/01/15~~);
- 351 Youthful Offender Parole (Amended 11/08/18~~07/01/15~~);~~[and]~~
- 352 Youthful Offender Transfer (Amended 11/08/18~~07/01/15~~);
- ~~354 Sentence Expiration Date and Parole Release for Youthful Offenders (Added 11/08/18);~~
- ~~360 Revocation Program Admissions (Added 11/08/18); and~~
- ~~361 Revocation Program Processes. (Added 11/08/18).~~

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

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: November 5, 2018

FILED WITH LRC: November 8, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m. Eastern Time, at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. The hearing is open to the public. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email [William.Codell@ky.gov](mailto:William.Codell@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: William Codell

(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 the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers, and the residential population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067, the American Correctional Association 4th Edition Standards, and the requirements of SB 200 (2014) and amendments to the Unified Juvenile Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of program services within residential programs in the Department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice into compliance to reflect actual practice and procedure of the agency. Policy and procedures for Department operated day treatment programs shall be removed and incorporated by reference into a New Administrative Regulation being filed by the Department in conjunction with this Amended Regulation.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and

15A.067 and provide clarification to Department of Juvenile Justice employees regarding new risk assessment and needs assessment tools that have been developed by the Department. In addition, the amendment removes references in the regulation to a risk and criminogenic needs assessment tool that is no longer being used by the Department, and the amendment removes references to a Cadet Leadership and Education Program that is no longer being operated by the Department.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or authorized representative to implement practices and procedures to ensure the safe and efficient operation of Department residential programs.

(d) How the amendment will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential population as to their duties, rights, privileges and responsibilities, allowing the Department to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: approximately 453 employees of residential programs, approximately 216 youth in DJJ residential programs, and all visitors and volunteers to DJJ facilities.

(4) Provide analysis of how the entities identified in question (3) will be impacted by 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: DJJ residential programs will need to update their facility Standard Operating Procedures to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each program will absorb the cost of updating procedures and training staff on updated policies. No monetary cost will be incurred by the youth, employees, or volunteers of the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To ensure a clearer understanding of the policies and procedures by staff and residents, thereby impacting the security and safety of the agency and the public. Furthermore, the amendments provide clarity for staff regarding use of a new risk assessment tool that was recently developed by the Department of Juvenile Justice, and the amendments remove references to a risk and criminogenic needs assessment tool that is no longer being used by the Department.

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

(a) Initially: No additional cost is projected.

(b) On a continuing basis: No additional cost is projected.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if necessary. No additional funding is required, however any associated training or staff allocations will come from the Department of Juvenile Justice General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering: Is tiering applied? No. Tiering 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 the Sections 2 and 3 of the Kentucky Constitution.

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? Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), KRS 15A.0652, KRS 15A.0654, KRS 15A.067, KRS 600.040, KRS 605.090, KRS 605.095, KRS 605.100, KRS 605.110(3), KRS 605.150, KRS 635.060, KRS 635.095, 635.100, 635.520, KRS 640.120, KRS 645.250

(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. The revised administrative regulations will only impact the Department of Juvenile Justice.

(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? Response: 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? Response: None

(c) How much will it cost to administer this program for the first year? Response: No additional cost is projected.

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

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 Alcoholic Beverage Control  
(Amendment)**

**804 KAR 1:070. Product development and marketing samples[Samples].**

RELATES TO: KRS 243.130, 243.150, 243.170, 243.180, 243.340, 244.240, 244.590

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 244.240 and 244.590 prohibit manufacturers, distributors and wholesalers from making any gift or rendering any kind of service to any retail licensee which may tend to influence the retailer to purchase the manufacturers', distributors', or wholesalers' product to the exclusion of a product sold or offered for sale by other persons. This administrative regulation establishes requirements for alcoholic product development and marketing samples.[As in any other business, it is necessary that the distillers and wholesalers of alcoholic beverages be allowed to provide samples of their products to their retailers. This administrative regulation is promulgated for that purpose and provides the permissible terms under which samples can be distributed.]

Section 1. (1) Product Samples to Retailers. Manufacturers, distributors, and wholesalers may provide free alcoholic beverage product samples to retailers under the following conditions:

(a) Samples shall be provided by an employee or agent of the manufacturer, distributor, or wholesaler. An employee or agent of a distiller, rectifier, winery, or wholesaler must hold a Kentucky special agent's or solicitor's license;

(b) Samples shall be limited to alcoholic beverage products sold or produced by the manufacturer, distributor, or wholesaler;

(c) Drink samples may be provided to a retailer's agents and employees at the retailer's premises by the employee or agent in person; and

(d) Package samples, not exceeding the following quantity limits, may be shipped to the retailer's licensed premises through a common carrier holding a Kentucky transporter's license:

1. 384 ounces of malt beverages per year;

2. Nine (9) liters of wine per year; and

3. Nine (9) liters of distilled spirits per year. [Any bottle of distilled spirits or wine used as a sample shall be so marked by affixing across the label a sticker, not readily removable, stating, "Sample - Not for Sale, (distiller's, rectifier's, winery's or wholesaler's name)."]

(2) Any alcoholic beverage container used for drink or package samples shall be so marked by affixing across the label a sticker, not readily removable, stating, "Sample - Not for Sale, (manufacturer's, distributor's, or wholesaler's name). [No representative of a distiller, rectifier, winery, or wholesaler shall have in his possession more than thirty-two (32) ounces of any brand, or more than a total of three (3) wine gallons of distilled spirits and wine of all brands at any time.]

(3) Package samples received by a retailer shall not be resold by the retailer and must be destroyed when the retailer completes its sampling of the product. [A distiller's, rectifier's, winery's or importer's representative shall obtain all samples from a wholesaler who has been designated.]

Section 2. Educational Sampling Events for Retailers. A manufacturer, distributor, or wholesaler may conduct an educational meeting and provide free samples of alcoholic beverages for the purpose of introducing new products or packaging under the following conditions:

(1) Educational meetings shall be held on licensed premises;

(2) Guests invited to attend educational meetings shall be limited to retail licensees, their employees, and agents;

(3) Only free hors d'oeuvres and drinks shall be served to invited guests;

(4) Free samples of alcoholic beverages served to invited guests shall be limited to products sold by the manufacturer, distributor, or wholesaler;

(5) Invited guests shall not take or keep any gift, favor, or alcoholic beverage packages from the premises where the educational meeting is conducted;

(6) A manufacturer, distributor or wholesaler may conduct tours of its licensed premises as part of an educational meeting held there; and

(7) A manufacturer, distributor, or wholesaler conducting the event, and the licensee of the premise where the event is held, shall be jointly and severally liable for violation(s) of the alcoholic beverage laws occurring during the event;

CHRISTINE TROUT VAN TATENHOVE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. Send written notification of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email [Lee.Walters@ky.gov](mailto:Lee.Walters@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Lee Walters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation permits manufacturers, distributors, or wholesalers to market, promote and educate retailers about their alcoholic beverage products through samples.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to manufacturers, distributors, and wholesalers on how they may market, promote and educate retailers about their alcoholic beverage products through samples.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing the licensing, supervision, and control of alcoholic beverages. KRS 244.240 and 244.590 prohibit manufacturers, distributors, and wholesalers from giving things of value to retailers to influence the licensee or cause a retailer to exclude, in whole or part, a competitors' products.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is necessary to provide objective standards for manufacturers, distributors, and wholesalers on how they may market, promote and educate retailers about their alcoholic beverage products through samples.

(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 changes the title of the regulation to more appropriately describe its subject matter. The amendment provides clear standards as to how solicitors of manufacturers, distributors, and wholesalers may provide product samples to retail businesses. The amendment also provides for product education events by manufacturers, distributors, and wholesalers for retailers. The consolidation of similar subjects into one regulation promotes uniformity and equal treatment of alcoholic beverage types. This amendment places all product marketing sample rules in one administrative regulation for ease of use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to create uniformity and equal treatment for educational sampling events for all alcoholic beverage types.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 entitles the board to promulgate reasonable administrative regulations governing procedures relative to the supervision and control of the use and sale of alcoholic beverages.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment allows manufacturers, distributors, and wholesalers to engage in legitimate business marketing practices without violating KRS 244.240 and KRS 244.590.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Almost all of the holders of the 16,000 plus licenses issued by the department are potentially affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Because this regulation simply clarifies and consolidates existing regulations and does not make any

substantive changes, there will be no need for regulated entities or the Department to take any further action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no anticipated costs associated with licensees' compliance with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be benefited by uniform laws and equal treatment of all alcoholic beverage types relating to how manufacturers, distributors, and wholesalers may market, promote and educate retailers about their alcoholic beverage products without violating KRS 244.240 and 244.590.

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

(a) Initially: There are no initial anticipated costs associated with the implementation of this amendment.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this amendment.

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

(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 increase in fees or funding necessary to amend this administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies similarly to similarly situated licensees.

#### 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 Department of Alcoholic Beverage Control as well as local alcoholic beverage control administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060 entitles the board to promulgate reasonable administrative regulations governing procedures relative to the supervision and control of the use and sale of alcoholic beverages.

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 revenue will be generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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: None.

#### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

#### 804 KAR 1:110. Consumer sampling events~~[Distilled spirits and wine tastings].~~

RELATES TO: KRS 243.0307, 243.036, 243.260 ~~[244.050], 244.240, 244.590~~

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 244.240 and 244.590 prohibit~~[prohibits a]~~ manufacturers, distributors, and wholesalers~~[distiller, rectifier, winery, or wholesaler]~~ from making any gift or rendering any kind of service to any retail licensee that~~[under KRS 243.030 which in the sound judgment of the board]~~ may tend to influence the retailer~~[licensee]~~ to purchase the manufacturers', distributors', or wholesalers' product to the exclusion of a competitor's product~~[of the distiller, rectifier, winery, or wholesaler]~~. This administrative regulation permits manufacturers, distributors, and wholesalers~~[distiller, rectifier, winery, or wholesaler of distilled spirits or wine]~~ to participate in certain events where samples are provided to consumers without violating KRS 244.240 and KRS 244.590 ~~[conduct educational meetings with a retailer of distilled spirits or wine consistent with modern marketing practices and three (3)-tier law].~~

Section 1.~~[A distiller, rectifier, winery, or wholesaler of distilled spirits or wine licensed under KRS 243.030 may conduct an educational meeting for the purpose of introducing new product or packaging, if:~~

(1) ~~The meeting is held at a premises licensed to sell alcoholic beverages at retail;~~

(2) ~~Each attendee holds or is employed by the holder of a license to sell distilled spirits or wine at retail;~~

(3) ~~No minor possesses an alcoholic beverage;~~

(4) ~~Only distilled spirits, wine, and hors d'oeuvres are served;~~

(5) ~~No attendee carries an alcoholic beverage away from the licensed premises at which the educational meeting takes place;~~

(6) ~~No attendee keeps any gift or favor received in connection with the educational meeting;~~

(7) ~~The distiller, rectifier, winery, or wholesaler gives the Department of Alcoholic Beverage Control at least ten (10) days advance written notice of the time and place of the educational meeting, details of the planned activities, and the estimated cost per attendee; and~~

(8) ~~The educational meeting does not include a distillery or winery tour.~~

#### Section 2.Charity and Non-Profit Events.

(1) ~~Manufacturers, distributors, and wholesalers~~~~[A distiller, winery, rectifier, or wholesaler of distilled spirits or wine]~~ may participate in charity or non-profit events~~[a private party or fundraiser conducted by a bona fide charitable organization, church, or civic group]~~ at which alcoholic beverages are~~[distilled spirits or wine is]~~ served, under the following conditions~~[-, if:]~~:

(a) ~~The event is held on licensed premises~~~~[private party or fundraiser takes place at a premise licensed or temporarily licensed to sell distilled spirits or wine by the drink at retail];~~

(b) ~~The charity or non-profit~~~~[bona fide charitable]~~ organization obtains the alcoholic beverages to be served at the event by:

1. Purchase under a special temporary drink license or special temporary alcoholic beverage auction license;

2. Purchase from a retail licensee where the event is held; or

3. Donations under a special temporary alcoholic beverage auction license; and~~[church, or civic group purchases all distilled spirits and wine for the private party or fundraiser from the retail licensee at whose premises it takes place; and]~~

(c) The participation of manufacturers, distributors, and wholesalers~~[a distiller, winery, rectifier, or wholesaler of distilled spirits or wine]~~ is limited to addressing the attendees, distributing literature, and pouring and serving alcoholic beverage products of



~~the manufacturer, distributor and wholesaler~~[distilled spirits or wine].

(2) ~~Manufacturers, distributors, and wholesalers participating in charity and non-profit events~~[The distiller, rectifier, winery, or wholesaler that is conducting the event and retail licensee] shall be jointly and severally liable with licensed charities, non-profits, or retailers for[any] violations[violation] of the alcoholic beverage control laws ~~occurring during~~[related to] the event.

Section 2. Sampling License Events.[Section 3.] (1) ~~Manufacturers or wholesalers~~[A distiller, winery, small farm winery, or wholesaler] of distilled spirits or wine may participate in[a] retailer sampling licensed events[event] under the following conditions[- if]:

(a) ~~The events occur~~[The sampling event strictly complies with KRS 244.050(3), and takes place] at[a] retail licensed premises where[a] sampling licenses[license] authorized by KRS 243.0307 are[KRS 244.050(2)-is] held;

(b) ~~Manufacturers and wholesalers may provide their distilled spirits or wine products for sampling license events without cost to retailers holding sampling licenses in an amount not to exceed the wholesale cost of \$500 per retail licensee per annum;~~[The retail license holder at whose premises the sampling event takes place purchases the samples from a licensed wholesaler of distilled spirits or wine before selling them at retail; and]

(c) Retail licensees holding sampling licenses shall purchase all distilled spirits or wine for events from licensed wholesalers if not provided under the conditions established in subsection (1)(b); and [The participation of a distiller, winery, small farm winery, or wholesaler of distilled spirits or wine is limited to addressing the customers, distributing literature, and pouring and serving distilled spirits or wine-]

(d) The participation of manufacturers and wholesalers in sampling license events is limited to addressing the customers, distributing literature, and pouring and serving samples of their distilled spirits or wine products.

(2) ~~Participating manufacturers or wholesalers~~[The distiller, winery, small farm winery, rectifier, or wholesaler that is conducting the event] and retail licensees[licensee] holding sampling licenses shall be jointly and severally liable for[any] violation(s) of alcoholic beverage control ~~law~~[laws] occurring during[related to the] sampling license events[event].

CHRISTINE TROUT VAN TATENHOVE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email [lee.walters@ky.gov](mailto:lee.walters@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Lee Walters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation permits manufacturers, wholesalers and distributors to have limited participation in charity and non-profit events. The regulation also permits manufacturers and wholesalers of distilled spirits and wine to have limited participation in retailer sampling license events.

(b) The necessity of this administrative regulation: KRS 244.240 and 244.590 prohibit manufacturers, distributors and wholesalers from inducing or influencing retail licensees to purchase the manufacturers', distributors', or wholesalers' product to the exclusion of a competitor's product. This administrative regulation is necessary to provide objective standards whereby manufacturers, distributors and wholesalers may participate in charity, non-profit, and licensed sampling events for philanthropy and promotional purposes in a way that does not influence a retailer to exclude competitors' products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate reasonable regulations. KRS 244.240 and 244.590 provide discretion to the board to provide standards for activities that do, and do not, influence a retailer to exclude competitors' products.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation and amendment provides objective standards to manufacturers, wholesalers and distributors to alleviate concerns and competitor allegations of conduct illegal under KRS 244.240 and 244.590.

(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 deletes Section 1 which has been recodified in a simultaneous amendment to 804 KAR 1:070. Section 1 was unrelated to remaining sections of this regulation and caused confusion among licensees. The deleted Section 1 dealt with product marketing and prohibited consumer participation whereby the remaining Sections of this regulation involve samples to consumers. The amendment further allows manufacturers and wholesalers of distilled spirits and wine to provide limited quantities of products to retailers for sampling license events for promotional purposes.

(b) The necessity of the amendment to this administrative regulation: The title change of this administrative regulation more accurately describes the content for ease of use by licensees. The amendment reflects current board interpretation of KRS 244.240 and 244.590 for charity and non-profit events, as well as for permissible trade spending by manufacturers, wholesalers and distributors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 entitles the board to promulgate reasonable administrative regulations governing procedures relative to the supervision and control of the use and sale of alcoholic beverages. KRS 244.240 and 244.590 provide discretion to the board to provide standards for activities that do, and do not, influence a retailer to exclude competitors' products.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will lessen licensee confusion by removing a section unrelated to consumer samples. This administrative regulation and amendment provides objective standards to manufacturers, wholesalers and distributors to alleviate concerns and competitor allegations of illegal conduct under KRS 244.240 and 244.590.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment applies to more than six thousand (6,000) department licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Because this regulation simply clarifies



existing language and codifies existing board interpretations, no additional steps will be required to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no expected cost to the Department or licensee resulting from this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have objective standards to support charities and promote products without fear of violating KRS 244.240 and 244.590.

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

(a) Initially: There are no initial anticipated costs associated with the implementation of this amendment.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this amendment.

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

(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 increase in fees or funding necessary to enforce this amendment to the administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly.

#### 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 Department of Alcoholic Beverage Control and local alcoholic beverage control administrators will be affected 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 241.060 authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the supervision and control of the use and sale of alcoholic beverages.

(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? This administrative regulation will not generate revenue for state or local government.

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

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

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any. There will be no cost to administer this program for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Department Of Insurance (Amendment)

#### 806 KAR 10:030. Surplus lines reporting[requirement for broker's statement] and[surplus lines] tax payment structure.

RELATES TO: KRS 304.1-070, 304.10-030, 304.10-050, 304.10-170, 304.10-180, 304.99-085

STATUTORY AUTHORITY: KRS 304.2-110, 304.10-050, 304.10-170, 304.10-210, [EO-2009-535]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance.] KRS 304.2-110 authorizes the commissioner[Executive Director of Insurance] to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[, as defined in KRS 304.1-010]. KRS 304.10-050 requires a surplus lines broker to file an affidavit setting forth facts from which it can be determined whether such insurance was eligible for export under KRS 304.10-040. KRS 304.10-170 requires the commissioner[executive director] to prescribe the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 340.10-210 requires the commissioner[executive director] to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax pursuant to[in accordance with] KRS 304.10-170 and 304.10-180.

#### Section 1. Affidavit Reporting[Definitions].

(1) A licensed surplus broker shall file an affidavit of eligibility for export with the department within fifteen (15) days after the effective date of each premium bearing surplus lines transaction["Alien insurer" is defined in KRS 304.1-070(3)].

(2) The affidavit shall be filed electronically through the department of insurance secure website, <http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>.

["Broker" or "surplus lines broker" is defined in KRS 304.10-030(1).  
(3) "Commissioner" means the Commissioner of the Department of Insurance.

(4) "Department" means the Department of Insurance.

(5) "Export" is defined in KRS 304.10-030(2).

(6) "Foreign insurer" is defined in KRS 304.1-070(2).

(7) "Premium charged" means the premium billed and collected during the preceding calendar quarter.]

#### Section 2. Quarterly Reporting and Payment of Surplus Lines Premium Taxes for Insurance Transactions.

(1) The department shall generate a quarterly report of all surplus lines transactions for a preceding calendar quarter, for each surplus lines broker based on the affidavits filed in accordance with section 1 of this administrative regulation[806 KAR 10:050].

(2) The department shall make the quarterly report available to a licensed surplus lines broker on its secure website[Web site], <https://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>, thirty (30)[at least sixty (60)] days following the end of each calendar quarter.

(3) Each licensed surplus lines broker shall:

(a) Reconcile the surplus lines taxes owed on the quarterly report with the broker's own records;[Retrieve his or her quarterly report from the department's secure Web site, <http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>; and]

(b) Notify the department of any discrepancy in surplus lines taxes owed; and

(c) Pay all[Remit a signed copy of the quarterly report, along with the] surplus lines premium tax and any applicable penalties owed pursuant to[in accordance with] KRS 304.99-085[; within thirty (30) days of the date of the quarterly report[end of each calendar quarter].

(4) Surplus lines premium tax shall be:

(a) Computed at the rate of three (3) percent on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as shown on the quarterly report;

(b) Payable to the Kentucky State Treasurer; and

(c) Remitted to the Kentucky Department of Insurance[;] electronically through the department's secure website, <http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>, [a]long with the quarterly report, within thirty (30) days of the end of each calendar quarter for all surplus lines transactions during the preceding calendar quarter.];

(5) Agencies paying a surplus lines premium tax on behalf of a broker shall submit payment electronically through the broker's Eservices account using the department's secure website, <http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>.

[The quarterly report shall be submitted quarterly by all licensed brokers even if no insurance transactions were completed during the period.]

(6) Payment of the surplus lines premium tax and any applicable penalty shall be deemed the submission of the broker's quarterly report and verified statement of transactions.

Section 3. Effective Date. The administrative regulation shall be effective beginning with the calendar quarter ending June 30, 2019[quarterly report due July 1, 2010].

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 8, 2018

FILED WITH LRC: November 13, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2018 at 9:30 a.m. at 215 W. Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** Patrick O'Connor II, Deputy Commissioner, Policy, P.O. Box 517, 215 W. Main Street, Frankfort, Kentucky 40602, phone 502-564-6026, email [patrick.oconnor@ky.gov](mailto:patrick.oconnor@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures required for the payment of premium taxes owed on surplus lines transactions. Surplus lines brokers are required to file affidavits with the Department of Insurance, which are used to calculate the amount of surplus lines premium taxes owed by each broker every quarter. The Department of Insurance invoices brokers, subject to their confirmation or contest, for the quarterly taxes owed. The broker is required to remit the applicable quarterly surplus lines premium taxes to the Department within thirty days of receipt of the quarterly report. Agencies paying surplus lines premium taxes on behalf of brokers must submit payment electronically through the broker's account to ensure an accurate accounting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the required surplus lines premium tax payment procedures required by KRS 304.10-180.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides the procedure necessary for the assessment and collection of the statutorily required surplus lines premium tax. It also provides necessary guidance on the filing of surplus lines affidavits required by KRS 304.10-050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clear procedural guidance for filing affidavits of eligibility for export with the Department of Insurance. This administrative regulation also requires the electronic filing of affidavits and payment of premium taxes owed to assist in the Department's internal accounting and reconciliation process of taxes owed.

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

(a) How the amendment will change this existing administrative regulation: This amendment to the administrative regulation provides a more efficient framework for the calculation, assessment, and collection of surplus lines premium taxes by using the department's online services. The current system allows individuals to pay in various manners causing internal accounting reconciliation difficulties. These issues necessitate the use of Department resources to submit requests to various brokers and agencies to confirm tax payments or seek additional amounts. This amendment eliminates these issues by streamlining the current system. First, the time to file affidavits required under KRS 304.10-050 is shortened from 60 and 90 days, respectively based on the domicile of the insurer, to fifteen (15) days. The time period is shortened because the affidavit requires very simple information about the transaction and can be entered into the current system immediately after a transaction is concluded. The additional time included in the previous version caused overlaps in the quarterly premium tax reporting leading to various discrepancies in the amounts owed and paid. The shortened time frame will eliminate these issues. Secondly, this amendment retains the Department's generation of a quarterly report establishing the amount of taxes owed based on the affidavits filed. The broker will be required to review and reconcile the report with their records. Thirdly, all surplus lines premium taxes will be due within thirty days of the quarterly report, which will shorten the overall period for payment of taxes that currently stands at 120 days following the end of the quarter. This shortened time frame will assist in the prompt payment of taxes owed, and relieve accounting burdens on the Department and brokers. Lastly, agencies can still pay taxes on behalf of brokers. However, in order to assist with the Department's accounting, they will have to pay electronically through the broker's account. Currently, agencies pay taxes in a lump sum without any indication as to the applicable broker. Taxes are assessed on the individual broker, so it is often impossible, without substantial follow-up, to determine the parties having paid taxes. These changes will shorten the overall time frame, simplify the entire system, and allow all parties involved to realize gains from a more efficient and expedient system.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to correct current deficiencies in the surplus lines premium tax payment system. These deficiencies cause an unnecessary and prolonged delay in the payment of surplus lines premium taxes, general confusion in reporting obligations, and require substantial follow-up to reconcile tax payments for all parties involved. The new system will comply with the statutory requirements and reduce the amount of Department resources necessary to oversee the system.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing a process that more efficiently requires the filing of affidavits, the quarterly payment of surplus premium taxes, and the submission of verified statements with the tax payments.

(d) How the amendment will assist in the effective administration of the statutes: This amendment requires electronic filing and eliminates any paper filings. The paper filings are difficult to read and lead to human errors in processing. The electronic

submissions will take advantage of an information technology system built and currently used that automatically processes affidavits and calculates the premium taxes owed. Secondly, the shortening of the time frames to submit affidavits and pay the taxes will lead to less chances of errors on transactions to be included within the quarter, and provides a more efficient, timely payment of taxes owed. Lastly, the changes for agency payments confirms the authority to submit such payments but ensures an accurate accounting occurs through the use of the individual broker account. All of these changes will improve the overall functionality of the system leading to reduced expenditures from the Department for collection, processing, and reconciliation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Registered surplus lines brokers and their agencies will be primarily impacted by the changes.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: Registered surplus lines brokers and agencies will be required to use the online process for submission of affidavits and payment of taxes. They will no longer be permitted to submit paper forms. Because all brokers are required to have an online account with the Department, the brokers will realize efficiencies in the submission of affidavits and payment of taxes. Brokers will be required to submit affidavits on a shorter period. Since the affidavits require the provision of information directly related to the transaction, they can be completed online contemporaneously with the transaction. This will essentially be the final step in the transaction process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Registered surplus lines brokers will not be required to undertake any expenditures to comply with the changes in the process. Brokers already are required to obtain and use the Department's online system. In fact, brokers and agents may save money based on efficiencies gained, and the easier accounting for premium taxes owed on such transactions.

(c) As a result of compliance, what benefits will accrue to the entities: Registered surplus lines brokers and agencies will be permitted to submit all information online in the affidavit process. The Department will calculate the taxes owed, and submit a statement to the brokers of the taxes owed. The brokers will not be required to file any separate statements but simply pay or acknowledge, if no taxes are owed, the quarterly report of taxes owed generated by the Department. Additionally, the new process will eliminate all paper filings currently generated by the brokers and agencies, and any necessary subsequent communication regarding proper accounting and payment.

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

(a) Initially: The system relied upon by the Department in the amendment is already built. The Department plans to fully utilize the system's capabilities. Therefore, the Department does not anticipate any initial costs for the system. The Department intends to expend some very limited resources on outreach to inform broker's of the new requirements and proactively answer questions or concerns.

(b) On a continuing basis: The Department does not anticipate any continuing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use general budget funds for any costs associated with the implementation of the amended 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: An increase in fees or funding is not necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: The amended administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements apply equally to all surplus lines brokers.

#### 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 Kentucky Department of Insurance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.10-050, KRS 304.10-170, KRS 304.10-180, and KRS 304.10-210 all require the actions included within the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amended administrative regulation will not generate any additional revenue. The surplus lines premium tax considered in the administrative regulation generated \$6,584,126.74 in 2017.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amended 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? The Department does not anticipate any administration costs due to the amended administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate any administration costs in subsequent years due to the amended administrative regulation.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Decrease.

Other Explanation: Reduction in staff time consumed by review of surplus lines filing will be significant, but no specific numbers will be available until implementation has been effective for some time.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Policy and Operations

##### (Amendment)

#### 907 KAR 1:560. Medicaid hearings and appeals regarding eligibility.

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 205.531, 211.461, 211.466, 42 C.F.R. 431 subpart E, 42 C.F.R. 431.233, 42 C.F.R. Part 456, 42 U.S.C. 1396

STATUTORY AUTHORITY: KRS 194A.025(1), 194A.030(2), 194A.050(1), 205.531[, EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by

federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to the Medicaid grievance, hearing and appeal process regarding Medicaid eligibility issues.

Section 1. Definitions. (1) "Appeal board" means the secretary, or entity or individual designated by the secretary of the Cabinet for Health and Family Services to hear appeals following a decision by a designated hearing agency.

(2) "Applicant" means an individual applying for Medicaid. (3)(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(4)(3) "Department" means the Department for Medicaid Services or its designee.

(5)(4) "Designated hearing agency" means the entity designated by the secretary of the Cabinet for Health and Family Services to adjudicate administrative hearings~~[Department for Social Insurance]~~.

(6)(5) "Recipient" means an individual who receives Medicaid.

(7) "Secretary" means the secretary of the Cabinet for Health and Family Services.

Section 2. Informing the Applicant or Recipient of His Rights. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456~~[906 KAR 4:080]~~, the following provisions shall apply:

(1) Each~~An~~ applicant or recipient shall be informed of his or her right to a hearing:

(a) Verbally and in writing when application is made; and

(b) In writing if an action is taken affecting the applicant's or recipient's~~his~~ eligibility in accordance with KRS 13B.050.

(2) Each~~An~~ applicant or recipient shall be informed of the method by which the applicant or recipient~~he~~ may obtain a hearing and that the applicant or recipient~~he~~ may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) Other spokesperson; or

(e) The applicant or recipient may elect to self-represent~~himself~~.

Section 3. Request for a Hearing. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456~~[906 KAR 4:080]~~, the following provisions shall apply:

(1) An applicant, recipient, or an authorized representative may request a hearing by filing a request with the designated hearing agency at the local office or central office of the Department for Community Based Services.

(2) The applicant, recipient, or authorized representative shall clearly indicate a desire for a hearing by submitting a statement:

(a) In written form; or

(b) Verbally and followed up in writing.~~[(3) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to submit the written request.]~~

Section 4. Time Limitation for Request. (1) To be considered timely, a hearing request relating to a Medicaid eligibility action or delay in taking a timely action~~written or verbal (with appropriate follow-up in writing) request~~ from an applicant, recipient, or authorized representative ~~[with regard to an action or a delay in taking a timely action by the Department for Medicaid Services or its designee regarding Medicaid eligibility]~~ shall be received by the designated hearing agency within:

(a) Thirty (30) days of the notice of:

1. Denial of an application;

2. Discontinuance of an active case; or

3. Increase in patient liability; or

(b) A time period equal to the delay in action by the agency.

(2) An additional thirty (30) days for requesting a hearing shall

be granted if it is determined by the representative of the designated hearing agency~~hearing officer~~ that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of:

1. Adverse action;

2. Discontinuance of Medicaid eligibility; or

3. Increase in patient liability;

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of:

1. Adverse action;

2. Discontinuance of the Medicaid eligibility; or

3. Increase in patient liability;

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Except as provided in subsection (3) or (4) of this section, Medicaid eligibility shall be continued at the level prior to the adverse action through the month in which the representative of the designated hearing agency's~~hearing officer's~~ decision is:

(a) Rendered if the request results from dissatisfaction regarding a:

1. Proposed discontinuance; or

2. Proposed increase in patient liability; and

(b) Received within ten (10) days of the date of the:

1. Advance notice of adverse action; or

2. Notice of discontinuance from the Department for Medicaid Services or its designee.

(2) Except as provided in subsection (4) of this section, Medicaid shall be reinstated and continued through the month in which the representative of the designated hearing agency's~~hearing officer's~~ decision is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of:

1. Adverse action;

2. Discontinuance of Medicaid eligibility; or

3. Increase in patient liability; and

(b) The reason for delay meets the good cause criteria established in Section 4(2) of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant, recipient or authorized representative requests the discontinuance or increase in patient liability to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation.

(5) A continued or reinstated benefit shall be considered an overpayment if the agency decision is upheld.

(6) A time limited benefit shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information regarding:

1. The hearing process;

2. The right to case record review prior to the hearing;

3. The right to representation; and

4. A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2)(a) A party to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case.

(b) Less timely notice may be requested by the applicant, recipient or authorized representative to expedite the scheduling of the hearing.

(3)(a) A hearing complying with the requirements of KRS

Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision.[,]

(b) A[with the exception that a] hearing determination shall be held within thirty (30) days of the hearing request date if it is regarding a:

1. Community[community] spouse income; or
2. Resource[resource] allowance[shall be held within thirty (30) days of the hearing request date].

Section 7. Withdrawal or Abandonment of Request. (1) The applicant, recipient, or authorized representative:

(a) May withdraw a[his] request for a hearing prior to release of the representative of the designated hearing agency's[hearing officer's] decision; and

(b) Shall be granted the opportunity to discuss withdrawal with the applicant's, recipient's, or authorized representative's[his] legal counsel or representative prior to finalizing the action.

(2)[Abandonment of request.]

(a) A hearing request shall be considered abandoned if the applicant, recipient, or authorized representative fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing.

(1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
- (b) Review the case record relating to the issue; and
- (c) Submit additional information in support of the applicant's or recipient's[his] claim.

(2) If the hearing involves medical issues:

(a) A medical assessment by an individual other than a person involved in the original decision shall be obtained, at the department's expense, if the representative of the designated hearing agency[hearing officer] considers it necessary; and

(b) If a medical assessment, at the department's expense, is requested by the applicant, recipient, or authorized representative and is denied by the representative of the designated hearing agency[hearing officer], the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant, recipient or authorized representative may request and shall be entitled to a postponement of a hearing if the request is made:

- (a) Before the hearing; and
- (b) In accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

(2) The decision to grant the postponement shall be made by the representative of the designated hearing agency[hearing officer].

(a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

(b) The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. (1) The department may determine that corrective action to provide or restore eligibility is appropriate if:

- (a) A hearing has been requested;
- (b) A hearing decision has not been rendered; and
- (c) The department's action or proposed action made the applicant or recipient ineligible for benefits to which the applicant or recipient[he] was entitled.

(2) After corrective action has been taken:

- (a) The applicant, recipient, or authorized representative shall be given the opportunity to withdraw the hearing request; and
- (b) The hearing process shall continue if the applicant,

recipient or authorized representative wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The representative of the designated hearing agency[hearing officer] shall be impartial and if necessary, the representative shall disqualify himself or herself as required by KRS 13B.040.

(3) The hearing shall be conducted in-state and at a location where the applicant, recipient, or authorized representative may attend without undue inconvenience.

(4) If necessary to receive full information on the issue, the representative of the designated hearing agency[hearing officer] may examine each party who appears and the party's[his] witnesses.

(5) The representative of the designated hearing agency[hearing officer] may schedule a hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 12. Exceptions to a Recommended Order. (1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and Family Services, Division of Administrative Hearings, within fifteen (15) days from the date that the recommended order is mailed.

Section 13. The Decision. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 42 C.F.R. Part 456[906-KAR 1:080], the following provisions shall apply:

(1) After the hearing is concluded, the representative of the designated hearing agency[hearing officer] shall issue a decision in accordance with the requirements of KRS 13B.110.

(2) A decision with regard to a community spouse's income allowance shall be subject to a downward adjustment as deemed necessary by the agency as circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment with regard to a resource that is:

1. Attributed to the community spouse; and
2. Not transferred within six (6) months of the Medicaid approval date.

(b) This adjustment shall be appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issue considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 14[13]. Appeal from Decision of Representative of the Designated Hearing Agency [hearing officer] for an Applicant and Recipient. (1) An applicant, recipient, or his authorized representative wishing to appeal the decision of a representative of the designated hearing agency[hearing officer] shall file an appeal to the designated[an appointed] appeal board.

(2) The appeal request shall be considered timely if it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the representative of the designated hearing agency's[hearing officer's] decision was mailed.

(3) If the good cause criteria established in Section 4(2) of this administrative regulation is met, an appeal request received within thirty (30) days of the representative of the designated hearing agency's[hearing officer's] decision shall be considered timely.

(4) The request shall be:



(a) Filed:

1. In writing; or
2. Verbally, if a written request is subsequently sent; and
- (b) Considered filed on the day the request is received.

(5) ~~[An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal or Withdrawal, to submit the written request.~~

(6) Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the representative of the designated hearing agency~~[hearing officer]~~.

Section 15[14]. Applicant's or Recipient's Rights Prior to an Appeal Board Consideration. (1) An appeal shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 16[15]. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the representative of the designated hearing agency~~[hearing officer]~~ unless the applicant, recipient, or authorized representative specifically requests permission to file additional proof or an exception to the recommended order was filed.

(2) If an appeal is being considered on the record, a party may present a written argument and at the appeal board's discretion, be allowed to present an oral argument.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to the introduction of additional evidence or to rebut or refute the additional evidence.

Section 17[16]. The Appeal Board Decision. The decision of the appeal board shall:

(1) Be duly signed by the secretary or members of the appeal board;

(2) Set forth in writing the facts on which the decision is based; and

(3) Be irrevocable in respect to the issue in the individual case unless the decision is set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150.

Section 18[17]. Medicaid Case Actions Following a Decision.

(1) A Medicaid case action following a decision of a representative of the designated hearing agency~~[hearing officer]~~ or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) If it is established that the applicant or recipient was eligible during an entire period, the month in which the incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal involving an increase in patient liability, action shall be taken to reduce the patient liability within ten (10) days of the receipt of the hearing or appeal board decision.

Section 19[18]. Medicaid Managed Care Provision of Services.

(1) A dispute resolution between a recipient and a partnership or managed behavioral health care organization shall be in accordance with KRS 211.461 through 211.466 and 42 C.F.R. Part 456[906-KAR 1:080].

(2) All other hearings or appeals relating to the Medicaid managed care provision of services shall be processed in accordance with 907 KAR 1:563.

Section 20[19]. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at

a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (brief included) of an appeal to the appeal board;

(c) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

Section 21[20]. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).~~[Section 21. Incorporation by Reference. (1) Form PAFS-78, May 1996 edition, Department of Medicaid Services, is incorporated by reference.~~

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

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2018, at 9:00 a.m. in Suites A & B, 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 December 14, 2018, 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 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091; [CHFSRegs@ky.gov](mailto:CHFSRegs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, [jonathant.scott@ky.gov](mailto:jonathant.scott@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the cabinet's grievance, hearing, and appeal process for matters related to Medicaid eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cabinet's grievance, hearing, and



appeal process for matters related to Medicaid eligibility.

(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 change this administrative regulation by updating the hearing and appeals process to comply with federal timeline requirements, allow for the cabinet secretary to sign final or recommended orders, allow for exceptions to a recommended order, delete a form that is no longer used, update obsolete language, and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the appeals process to comply with federal timeline requirements, update obsolete language and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating the appeals process to comply with federal timeline requirements, updating obsolete language and making the regulatory language consistent with the terminology of KRS Chapter 13B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by updating the appeals process to comply with federal timeline requirements, updating obsolete language and making the regulatory language consistent with the terminology of KRS Chapter 13B.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects all current Medicaid recipients. Currently 1.2 million people within the Commonwealth are Medicaid recipients.

(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 will be necessary to comply.

(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 impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A more timely appeals process will be implemented.

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

(a) Initially: The Department for Medicaid Services (DMS) does not anticipate any additional costs to implement this amendment.

(b) On a continuing basis: DMS does not anticipate any additional costs to implement this 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 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: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

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

## 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 will affect each Medicaid recipient who requests appeal of an action affecting their eligibility for medical assistance.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 13B, KRS 205.231, 205.237, and 42 C.F.R. 431.200 - 250.

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? This amendment will not generate revenue for state or local government during the first year of program administration.

(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 revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431 Subpart E.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. subpart E governs fair hearings for applicants and beneficiaries.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Medicaid Services

### Division of Policy and Operations

### (Amendment)

**907 KAR 1:563. Medicaid covered services appeals and hearings unrelated to managed care.**

RELATES TO: KRS Chapter 13B, 194A.025, 205.231, 205.237, 205.520, 205.8451, 210.270, 42 C.F.R. 431.233, 431.244, Part 475, 475.101, 483.2, 483.12, 431 Subpart E, 483 Subpart E, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2) and (3), 205.6315, 42 U.S.C. 1396

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes policies and requirements relating to an adverse action, an appeal, or a hearing regarding Medicaid covered services that are not the responsibility of a managed care organization.

Section 1. Definitions. (1) "1915(c) home and community based waiver service" means a service available or provided via a 1915(c) home and community based waiver services program.

(2) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(3) "Administrative hearing" is defined by KRS 13B.010(2).

(4) "Appeal board" means the entity or individual designated by the secretary of the Cabinet for Health and Family Services to hear appeals of recommended orders or final orders following a decision by a designated hearing agency or hearing officer.

(5) "Applicant" means an individual who has applied for Medicaid covered services.

(6)[(5)] "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the recipient or the applicant; or

(b) A legal guardian.

(7)[(6)] "Cabinet" means the Cabinet for Health and Family Services.

(8)[(7)] "Department" means the Department for Medicaid Services or its designee.

(9) "Designated hearing agency" means the entity designated by the secretary of the Cabinet for Health and Family Services to adjudicate administrative hearings.

(10)[(8)] "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program covered services.

(11)[(9)] "Final order" is defined by KRS 13B.010(6).

(12)[(10)] "Hearing officer" is defined by KRS 13B.010(7), and includes a representative from a designated hearing agency.

(13)[(11)] "ICF IID" means intermediate care facility for an individual with an intellectual disability.

(14)[(12)] "Managed care organization" or "MCO" 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.

(15)[(13)] "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(16)[(14)] "Party" is defined by KRS 13B.010(3).

(17)[(15)] "PASRR" means preadmission screening and resident review.

(18)[(16)] "Patient liability" means the financial obligation of a recipient towards the cost of the recipient's nursing facility services or services provided pursuant to a 1915(c) waiver.

(19)[(17)] "Provider" is defined by KRS 205.8451(7).

(20)[(18)] "QIO" or "quality improvement organization" means an entity that meets the requirements established in 42 C.F.R. 475.101.

(21)[(19)] "Recipient" is defined by KRS 205.8451(9).

(22)[(20)] "Recommended order" is defined by KRS 13B.010(5).

(23)[(21)] "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Administrative Hearing Rights. (1) An applicant, recipient, or authorized representative shall be informed, in writing, of the applicant's or recipient's right to an administrative hearing if an adverse action is taken affecting covered services.

(2) An applicant, recipient, or authorized representative shall be informed of the method by which the applicant or recipient may obtain an administrative hearing and that the applicant or recipient

may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) A spokesperson not listed in paragraph (a), (b), (c), (e), or

(f) of this subsection;

(e) An authorized representative; or

(f) Himself or herself.

(3) An adverse action notice shall contain a statement of:

(a) The Medicaid adverse action;

(b) The reason for the action;

(c) The specific federal or state law or administrative regulation that supports the action; and

(d) An explanation of the circumstances under which payment for services shall be continued if an administrative hearing is requested in a timely manner pursuant to Section 5 of this administrative regulation.

Section 3. Notification Process. (1) An adverse action notice regarding an applicant or a recipient shall be mailed to the applicant, recipient, or authorized representative of the applicant or recipient using:

(a) The United States Postal Service; and

(b) A return receipt requested format.

(2) Refusal by an applicant, a recipient, or an authorized representative to confirm receipt of an adverse action notice shall be considered receipt of the adverse action notice.

Section 4. Request for an Administrative Hearing. (1) An applicant, recipient, or an authorized representative may request an administrative hearing by filing a written request with the department.

(2) If an applicant, recipient, or authorized representative requests an administrative hearing, the request shall:

(a) Be in writing and clearly specify the reason for the request;

(b) Indicate the date of service or type of service for which payments may be denied; and

(c) Be postmarked within thirty (30) calendar days from the date of the department's written notice of adverse action of:

1. Discontinuance of services;

2. Adverse determination made with regard to the PASRR requirements of 42 U.S.C. 1396r(e); or

3. Patient liability.

Section 5. Continuation of Medicaid Covered Services. (1)(a) Except as established in paragraphs (b) or (c) of this subsection or subsections (2), (3), or (4) of this section, if a request for an administrative hearing is postmarked or received within ten (10) days of the advance notice date of denial, the individual shall remain eligible for the care, program participation, or service denied until the date that the final order is rendered in accordance with Section 12[41] of this administrative regulation.

(b) The individual shall not remain eligible for the care, program participation, or service denied if:

1.a. It is determined at the administrative hearing that the sole issue is one of federal or state law or policy; and

b. The department promptly informs the individual in writing that the services shall be terminated or reduced pending the administrative hearing decision;

2. The individual's eligibility for time-limited benefits has expired; or

3. The individual receives in full the specified amount of care or number of services that were authorized by the department.

(c) Except as established in paragraph (d) of this subsection, a request for an amount of care or number of services subsequent to receiving a previously authorized amount of care or number of services in full shall not be considered a continuation of the previously authorized amount of care or number of services.

(d) The following shall qualify for continuation of services in accordance with paragraph (a) of this subsection if the care, program participation, or service was previously received by the individual within thirty (30) days of the request for continuation:

1. Denial that an individual meets patient status criteria to

qualify for nursing facility services pursuant to 907 KAR 1:022;

2. Denial that an individual meets patient status criteria to qualify for ICF IID services pursuant to 907 KAR 1:022;

3. Denial that an individual meets nursing facility level of care criteria, nursing facility patient status criteria, or ICF IID patient status criteria pursuant to 907 KAR 1:022 to qualify for 1915(c) home and community based waiver services; or

4. Denial of a 1915(c) home and community based waiver service.

(2) Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(3) Time-limited benefits shall not be extended based on a request for an administrative hearing.

(4) If a request for an administrative hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, the department shall continue to reimburse for nursing facility services until the date that the final order is rendered.

Section 6. Notice of Scheduled Hearing. (1) A scheduled administrative hearing notice shall contain:

(a) The date, time, and place of the scheduled administrative hearing; and

(b) A statement that the local Department for Community Based Services office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2) An administrative hearing shall be conducted within thirty (30) days of the date of the request for an administrative hearing unless otherwise authorized by the designated hearing agency[hearing officer].

(3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

(a) Legal counsel or other representation;

(b) Review the case record relating to the issue; and

(c) Submit additional information in support of the applicant's or recipient's claim.

(4)(a) If an administrative hearing involves medical issues, a medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review.

(b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be established in writing.

Section 7. Conduct of an Administrative Hearing. (1) An administrative hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(2) A hearing officer shall be impartial and shall disqualify himself or herself as required by KRS 13B.040.

(3) An administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) A designated hearing agency[hearing officer] shall offer to transmit a recommended order by electronic format.

(5) If necessary to receive full information on the issue, a designated hearing agency[hearing officer] may examine each party who appears and the party's witnesses.

(6)(a) A designated hearing agency[hearing officer] may reopen the administrative hearing and take additional evidence as is deemed necessary.

(b) Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Designation of Alternative Hearing Agency and Appeal Board. (1) The secretary of the cabinet may:

(a) Select a designated hearing agency; or

(b) Create a designated hearing agency.

(2) A designated hearing agency shall:

(a) Be composed of cabinet employees who shall serve as

hearing officers; and

(b) Follow all requirements established pursuant to KRS Chapter 13B.

(3) The secretary of the cabinet may:

(a) Select an appeals board; or

(b) Create an appeals board.

(4) An appeals board shall follow all requirements established pursuant to KRS Chapter 13B and KRS 194A.025.

Section 9. Withdrawal or Abandonment of Request. (1) A recipient or authorized representative:

(a) May withdraw the appeal for an administrative hearing prior to the release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with the recipient's legal counsel or authorized representative prior to finalizing the action.

(2) An administrative hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the administrative hearing.

Section 10[9]. Recommended Order. (1) After an administrative hearing is concluded, the hearing officer shall issue a recommended order in accordance with KRS 13B.110.

(2)(a) A recommended order shall be issued within thirty (30) days of the administrative hearing date, except for a recommended order regarding:

1. A nursing facility level of care or patient status decision;

2. An ICF IID patient status decision;

3. A nursing facility level of care, nursing facility patient status, or ICF IID patient status decision related to 1915(c) home and community based waiver program participation; or

4. A 1915(c) home and community based waiver service.

(b) A recommended order regarding an item listed in paragraph (a) of this subsection shall be issued within fifteen (15) calendar days of the administrative hearing date.

(3)(a) A copy of the recommended order shall be:

1. Mailed to each party in accordance with KRS 13B.110(4); or

2. Sent by electronic means to any party which requests, during the administrative hearing, that the order be sent by electronic means.

(b) If requested during the administrative hearing, a copy of the recommended order shall be electronically transmitted to a site specified by the applicant or recipient on the date the recommended order is rendered.

Section 11[40]. Exceptions to a Recommended Order. (1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and Family Services, Division of Administrative Hearings within fifteen (15) days from the date that the recommended order is mailed.

Section 12[44]. Final Order or Review of Recommended Order. (1) The secretary of the Cabinet for Health and Family Services or other party authorized by KRS 13B.010 shall issue a final order:

(a) Within ninety (90) days from the date of the request for an administrative hearing; or

(b) As established in 42 C.F.R. 431.244(f).

(2) In accordance with 42 C.F.R. 431.233, unless a recipient requests a de novo hearing, the review of a recommended order shall consist of a cabinet level review of the record of the administrative hearing.

(b) If an exception to a recommended order was not filed, the information in the record considered in the cabinet level review or final order shall be limited to the information considered at the administrative hearing.

(c) If a recipient requests a de novo hearing, at the de novo hearing either party may offer:

1. Evidence not presented at the hearing below; and

2. The evidentiary record of the fair hearing.

Section 13[42]. Judicial Review of a Final Order. (1) A further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the final order in accordance with KRS 13B.140 and 13B.150.

(2) Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1)(b) of this administrative regulation.

Section 14[43]. Medicaid Case Actions Following Circuit Court Level Appeal Decision. (1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to:

(a) Remain in a nursing facility or an ICF IID during the circuit court appeal process, the department shall reimburse for the nursing facility services or ICF IID services which occurred during the circuit court appeal process; or

(b) Receive a 1915(c) home and community based waiver service during the circuit court appeal process, the department shall reimburse for the service which occurred during the circuit court appeal process.

Section 15[44]. Special Procedures Relating to a Managed Care Participant. (1) For an adverse action toward an enrollee regarding a service that is within the scope of managed care, the requirements governing the MCO internal appeal process and the department's hearing process for the enrollee shall be as established in 907 KAR 17:010.

(2) For an adverse action by the department toward an enrollee regarding a service that is not within the scope of managed care, the appeals policies and requirements established in this administrative regulation shall apply.

Section 16[45]. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court; or

(c) \$300 for preparatory work and briefs and all other matters incident to an appeal to the:

(a) Court of Appeals; or

(b) Supreme Court of Kentucky.

(2)(a) Enforcement of payment of a fee shall:

1. Not be a matter for the department or the cabinet; and

2. Be a matter between the counsel or agent and the recipient.

(b) The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

(3)(a) The fee limitations stated in subsection (1) of this section shall:

1. Apply to the amount an attorney may charge a recipient or applicant; and

2. Not apply to the amount an attorney may collect from another entity or person who represents the recipient or applicant in all categories of Medicaid.

(b) The amount an attorney may collect from an entity or person who is not a recipient or applicant for representing the recipient or applicant in all categories of Medicaid shall:

1. Be a matter between the attorney and other entity or person; and

2. Not be a matter that involves the department or cabinet.

Section 17[46]. A hearing or an appeal relating to a decision to reclassify or transfer a person with an intellectual disability in a state institution shall be in accordance with the requirements of KRS 210.270 and 907 KAR 1:075.

Section 18[47]. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2018, at 9:00 a.m. in Suites A & B, 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 December 14, 2018, 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 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091; [CHFSRegs@ky.gov](mailto:CHFSRegs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, [jonathant.scott@ky.gov](mailto:jonathant.scott@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(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 authorizing statutes by establishing Medicaid program policies and requirements regarding covered services hearings and appeals for the Medicaid population.

(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 change this administrative regulation by updating the hearing and appeals process to comply with federal timeline requirements, allow for the cabinet secretary to sign final or recommended orders, update obsolete language, and to make the regulatory language consistent with the terminology of KRS Chapter 13B.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the appeals process to comply with federal timeline requirements, update obsolete language and make the regulatory language consistent with the terminology of KRS Chapter 13B.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(d) How the amendment will assist in the effective

administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by clarifying policy and revising language and formatting to ensure that it complies with KRS Chapter 13A standards.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects recipients of Medicaid services. Currently, more than 145,000 Kentuckians receive Medicaid Fee for Service services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A recipient who wishes to appeal a Medicaid service denial shall comply with the appeal provisions established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DMS anticipates no cost imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The clarifications should benefit recipients in being able to better understand the appeals policies and requirements.

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

(a) Initially: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(b) On a continuing basis: DMS anticipates that the amendment to this administrative regulation will not result in additional costs to the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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: This administrative regulation does not impose or increase any fees.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those 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? The Department for Medicaid Services will be impacted by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, KRS 194A.030(2), 194A.050(1), 205.231, 205.237, 205.520(3), 42 C.F.R. 431 Subpart E and 42 C.F.R. 483 Subpart E.

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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost as a result of the amendment.

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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431 Subpart E and 42 C.F.R. 483 Subpart E.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall 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 205.237 establishes that "any individual claiming public assistance in any proceeding before the appeal board or a court may be represented by counsel; but no counsel shall either charge or receive for such service more than an amount established by the secretary by administrative regulation." KRS 205.231 establishes appeals, hearing officer and related provisions.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431, Subpart E requires the Medicaid program's hearing system to provide for a hearing before the agency or an evidentiary hearing at the local level, with a right of appeal to a state agency hearing and the hearing system must meet the due process standards established in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in 42 C.F.R. 431, Subpart E. Additionally, the Medicaid program must satisfy various notice requirements, as well as hearing conduct requirements, among other related requirements.

42 C.F.R. 483, Subpart E requires the Medicaid program to provide a system for a resident of a skilled nursing facility (SNF) or a nursing facility (NF) to appeal a notice from the SNF or NF of intent to discharge or transfer the resident, and for an individual adversely affected by any pre-admission screening resident review (PASRR) determination made by the state in the context of either a preadmission screening or an annual resident review under subpart C of part 483 to appeal that determination. Additionally, the Medicaid program must provide an appeals system that meets the requirements of this 42 C.F.R. 483, Subpart E and 42 C.F.R. 431, Subpart E.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, than federal, requirements.

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

**921 KAR 2:055. Hearings and appeals.**

RELATES TO: KRS Chapter 13B, 23A.010, 45.237, 199.892, 205.211, 205.231, 205.237, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 199.8994, 205.231(5), 42 U.S.C. 602, 8624

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary 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. 42 U.S.C. 602 and 42 U.S.C. 8624 require states receiving Temporary Assistance for Needy Families (TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for participants and outline this procedure in the applicable state plan. KRS 199.8994(1) requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner ~~that~~which is in the best interest of the clients to be served. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

Section 1. Hearing Information. (1) A participant shall be informed of:

- (a) The right to a hearing;
- (b) The procedures for requesting a hearing, as established in Section 3 of this administrative regulation; and
- (c) Who may represent the participant in a hearing, as established in Section 2 of this administrative regulation.

(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.

(3) When an action is taken ~~that~~which affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.

Section 2. Request for a Hearing. (1) An individual shall request a hearing by:

~~(a) Completing and submitting a PAFS-78, Request for Hearing or Withdrawal;~~

~~(b)] Submitting a written request; or~~

~~(b)](e)] Making an oral request.~~

(2) The hearing request may be:

(a) Submitted to the local Department for Community Based Services office; or

(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the

cabinet within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

(a) For:

1. A delay in requesting a hearing;

2. A delay in requesting a continuation of benefits;

3. Failure to appear for a hearing; or

4. Postponement of a scheduled hearing; and

(b) If the appellant:

1. Was away from home during the entire filing period;

2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;

3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;

4. Had a household member who was seriously ill; ~~or~~

5. Was not at fault for the delay of the request, as determined by the hearing officer; or

6. Did not receive the notice.

Section 4. Continuation of Assistance Program Benefits. (1) If a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

(a) Ten (10) days of the date on the notice of adverse action; or

(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.

(3) If the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation, subsection (2) of this section shall not apply.

(4) If the action taken by the agency is upheld, continued or reinstated benefits shall be:

(a) Considered overpayments as defined in KRS 205.211; and

(b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch, shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

(a) Hearing process, including the right to case record review prior to the hearing;

(b) Right to representation;

(c) Availability of free representation by legal aid or assistance from other organizations within the community; and

(d) Time and location of the hearing.

(3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:

(a) Hearing; or

(b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

(a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and

(b) Establish good cause for failure to appear, in accordance



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with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights. (1) In addition to the rights described in Section 5 of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.

(2) The appellant shall have the right to a medical assessment or professional evaluation at the expense of the cabinet by a source:

- (a) Not associated with the original action; and
- (b) Agreeable to both the appellant and the cabinet if:
  1. The hearing involves medical issues; and
  2. The hearing officer considers it necessary.
- (3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:
  - (a) Be in writing; and
  - (b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:

- (a) Request for the postponement is made prior to the hearing; and
  - (b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.
- (2) The hearing officer shall decide if a hearing is postponed.
- (3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:

- (a) Scheduled by the hearing officer; and
  - (b) Conducted in accordance with KRS 13B.080 and 13B.090.
- (2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.
- (3) To secure all pertinent information on the issue, the hearing officer may:
- (a) Examine each party or witness who appears; and
  - (b) If necessary, collect additional evidence from a party.
- (4)(a) If consent is obtained from each party to the appeal and from each party required to testify under oath, a telephonic hearing may be conducted.
- (b) Parties to a telephonic hearing shall:
1. Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and
  2. Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:
    - a. Are introduced as evidence into the hearing record; and
    - b. Have not been supplied to the opposing party prior to the hearing.
- (5) If evidence addressed in subsection (4)(b) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. A Hearing Officer's[Recommended] Order. (1) After the hearing has concluded, the hearing officer shall draft an[a recommended] order in accordance with KRS 13B.110 that[, which]:

- (a) Summarizes the facts of the case;
  - (b) Specifies the:
    1. Reasons for the[recommended] order; and
    2. Address to which a party in the hearing may send an exception to the[recommended] order;[and]
  - (c) Identifies the:
    1. Findings of fact;
    2. Conclusions of law;
    3. Supporting evidence; and
    4. Applicable state and federal regulations; and
  - (d) Addresses the parties' arguments.
- (2) A copy of the hearing officer's[recommended] order shall be

sent simultaneously to the:

- (a) Appellant or representative; and
- (b) ~~[Appeal Board for Public Assistance established in accordance with KRS 205.231; and~~
- (e) Department for Community Based Services, ~~[-] Division of Family Support.~~

(3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120 and 205.231 sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 11 of this administrative regulation.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the hearing officer's[recommended] order, the party may file a written exception in accordance with KRS 13B.110(4) with the secretary or the secretary's designee[Appeal Board for Public Assistance].

- (2) A written exception or rebuttal shall:
  - (a) Be filed within fifteen (15) days of the date the hearing officer's[recommended] order was mailed;
  - (b) Be based on facts and evidence presented at the hearing;
  - (c) Not refer to evidence that was not introduced at the hearing; and
  - (d) Be sent to each other party involved in the hearing.

Section 12. Final Order. (1) Unless Section 10(3) of this administrative regulation applies, the secretary or the secretary's designee shall issue a final order in accordance with KRS 13B.120 and 205.231. ~~[Appeal Board Review. (1) In accordance with KRS 13B.120 and 205.231, the Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the recommended order and subsequent appeal to the:~~

- (a) Parties to the hearing; and
  - (b) ~~Commissioner of the Department for Community Based Services.~~
- (2) The acknowledgement shall:
- (a) Offer the opportunity to:
    1. File a brief; or
    2. ~~Request permission to submit new or additional evidence;~~
- and
- (b) ~~State the tentative date on which:~~
    1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and
    2. The Appeal Board for Public Assistance shall consider the appeal.
  - (3) The Appeal Board for Public Assistance shall consider:
    - (a) The records of the hearing; and
    - (b) ~~New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.~~
  - (4) If an appeal is being considered on the record, the parties may:
    - (a) Submit written arguments; and
    - (b) ~~Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.~~
  - (5) ~~If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.~~

~~Section 13. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be in accordance with KRS 13B.120 and 205.231.]~~

(2) The secretary's designee[Appeal Board for Public Assistance] may reverse the decision in subsection (1) of this section if the following criteria are met:

- (a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and
- (b) Within twenty (20) days of the hearing officer's[Appeal Board for Public Assistance's] decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental Security Income pursuant to 42 U.S.C. 1381-

1383f;

2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;

3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;

4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v; or

5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

(3) A party aggrieved by the ~~Appeal Board for Public Assistance's~~ decision of the secretary or the secretary's designee may pursue judicial review of the decision in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010 ~~and 13B.150~~.

Section ~~13~~~~[14]~~. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order ~~issued by the Appeal Board for Public Assistance~~ and shall include:

(a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order ~~issued by the Appeal Board for Public Assistance~~.

Section ~~14~~~~[15]~~. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the ~~secretary or the secretary's designee~~ ~~appeal board~~;

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or

(d) \$300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

(a) Appellant and legal counsel agree to the fee; and

(b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

(a) Be the responsibility of the counsel or agent; and

(b) Not be deducted from the benefits provided to an appellant. ~~[Section 16. Incorporation by Reference. (1) The form, "PAFS-78, Request for Hearing or Withdrawal", 12/28/15, is incorporated by reference.~~

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2018, at 9:00 a.m. in Suites A & B, 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 December 14, 2018, 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 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 be heard at the public hearing, you may submit written comments on this proposed administrative

regulation until December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone: (502) 564-3703, email: [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the hearing requirements for multiple public assistance programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes through its establishment of hearing requirements for K-TAP, LIHEAP, SSP, and CCAP applicants and recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation currently assists in the effective administration of the statutes through its establishment of hearing requirements for multiple public assistance programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation improves the timeliness of these hearings through the allowance of a hearing officer's order to become a final order if there is no exception or rebuttal and through the transition of the final order process from the Appeal Board for Public Assistance to the cabinet secretary or the secretary's designee. The amendment also removes a required form providing additional flexibility on the part of an individual to file a request for hearing. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to improve the timeliness of hearings, thereby preserving federal funding through the avoidance of federally imposed corrective action or federal financial penalty. In addition, the amendment is necessary to align hearing processes across public assistance programs administered by the department.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its enhancement of hearings' timeliness and consistency in hearing procedures across public assistance programs administered by the department.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhancements to hearing procedures for improved timeliness and consistency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is an average of 2,300 hearings for all public assistance programs, including the Supplemental Nutrition Assistance Program (SNAP), 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: There is no new action required on the part of individuals seeking appeals or appellants.

(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 new cost for individuals seeking appeals or appellants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals seeking appeals and appellants will have greater flexibility in the means by which they can request a hearing and will benefit from enhanced timeliness and consistency across public assistance programs administered by the department.

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

(a) Initially: There is no anticipated new cost for the administrative body to implement the regulatory amendment.

(b) On a continuing basis: There is no anticipated new cost for the administrative body to implement the regulatory amendment. The amendment is anticipated to preserve the state's federal funding for public assistance programming.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under the Temporary Assistance for Needy Families Block Grant, the Low-Income Home Energy Assistance Block Grant, and the Child Care and Development Fund Block Grant, along with state general funds, are used for the implementation and enforcement of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050, 199.8994, 205.231

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

#### 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 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 13B.170, 194A.010, 194A.050, 199.8994, 205.231, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

(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? This administrative regulation will generate no revenue for government in its first year.

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

(c) How much will it cost to administer this program for the first year? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Family Support

##### (Amendment)

**921 KAR 3:050. Claims and additional administrative provisions.**

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.18 requires the agency administering SNAP to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP.

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

(1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;

(2) A sponsor of an alien household member if the sponsor is at fault; or

(3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

#### Section 2. Claim Category.

(1) As specified in 921 KAR 3:010, a recipient claim shall be classified as an:

- (a) Inadvertent household error (IHE);
- (b) Agency error (AE); or
- (c) Intentional program violation (IPV).

(2) A suspected intentional program violation (SIPV) shall be:

(a) Established if fraud is suspected, but the client does not admit to committing fraud;

(b) Referred to court or an administrative hearing for a fraud determination; and

(c) Changed to an:

1. IHE category without decreasing the claim period or recalculating the claim if fraud is not substantiated; or

2. IPV category if fraud is substantiated[Until fraud is substantiated, an IPV claim shall be established as an IHE with a Suspected Intentional Program Violation (SIPV) indicator].

#### Section 3. Acting on a Change.

(1) A claim shall be established if a household:

(a) Fails to report a change in circumstance in accordance with the timeframes specified in 921 KAR 3:035; or

(b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.

(2) The first month of overissuance, as defined in 921 KAR 3:010, shall:

(a) Be the first month that the change would have been effective had it been timely:

- 1. Reported by the household; or
- 2. Acted upon by the cabinet; and

(b) Not exceed two (2) months from the month the change in circumstance occurred.

#### Section 4. Calculating the Amount of a Recipient Claim.

(1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:

(a) Calculate:

1. An ~~IHE or~~ AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance ~~[unless an IHE has an SIPV indicator]; and~~

2. An IHE claim back to the month the overissuance first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance; and

3. An IPV or an SIPV claim [IHE claim with a SIPV indicator] back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;

(b) Determine the correct amount of SNAP benefits for each month that a household received an overissuance;

(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:

- 1. The claim is classified as an IPV, SIPV, or IHE; and
- 2. The IHE, SIPV, or IPV is the basis for the recipient claim;

(d) Subtract the correct amount of SNAP benefits from the benefits actually received and the difference shall be the amount of the overissuance; and

(e) Deduct any SNAP benefits that are designated to be expunged from a household's EBT account from the amount of overissuance:

- 1. When the recipient claim is initially calculated; and
- 2. At each subsequent expungement until the balance of the claim is paid in full.

(2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked SNAP benefits as determined by:

- (a) An individual's admission;

(b) Adjudication; or

(c) The documentation that forms the basis for the trafficking determination.

(3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or

(b) A court.

(4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is seventy-five (75) dollars[\$125] or less, unless the:

(a) Household is currently participating in SNAP; ~~or~~

(b) Recipient claim was established or discovered through a quality control review; or

(c) The basis of the claim is trafficking SNAP benefits.

#### Section 5. KCD-1.

(1) A KCD-1, General Claims Notice shall serve many purposes in the administration of claims collections, including the use as:

- (a) An appointment notice;
- (b) A demand letter;
- (c) Notification of benefit reduction;
- (d) A past due notice;
- (e) A repayment agreement;
- (f) A claim adjustment notice;
- (g) A claim termination notice;
- (h) A payment receipt;
- (i) Notice of a suspended claim;
- (j) Notice of a claim being paid in full; or
- (k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.

(2) The language on the KCD-1 shall differ according to the purpose of the notice as described in subsection (1) of this section.

#### Section 6. Notification of a Claim.

(1) A household with a suspected claim shall be mailed a KCD-1 notifying the household of an appointment to:

- (a) Discuss the potential claim;
- (b) Determine the classification of the claim, as specified in Section 2 of this administrative regulation; and
- (c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.

(2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.

(3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:

- (a) Fails to attend the appointment to discuss the potential claim; and
- (b) Does not contact the cabinet to reschedule the appointment.

(4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:

- (a) Amount;
- (b) Time period;
- (c) Reason; and
- (d) Category, as specified in Section 2 of this administrative regulation.

(5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:

- (a) Initiate a repayment agreement; or
- (b) Request a hearing on the claim.

#### Section 7. Collection Methods.

(1) Benefit reduction.

(a) A household that is participating in SNAP shall have payments on the claim made by reducing its monthly SNAP

benefits through benefit reduction by the following amount:

1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or

2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.

(b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:

1. Additional payment is voluntary; or

2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.

(2) A household may pay its claim using SNAP benefits from its EBT account if the household gives the cabinet permission:

(a) By completing and returning a KCD-1 or other written statement requesting this option; or

(b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.

(3) If the cabinet becomes aware of expunged SNAP EBT benefits, the claim balance shall be reduced by an amount equal to the expunged benefits.

(4) During the claim establishment and collection process, the cabinet shall:

(a) Deduct the amount of an outstanding recipient claim from SNAP benefits that may be owed to a household; and

(b) Send the household a KCD-1 as notification of the adjustment.

(5) A lump sum payment on a recipient claim:

(a) Shall be accepted by the cabinet; and

(b) May be a full or partial payment.

(6) If a household is not participating in SNAP, the cabinet shall:

(a) Negotiate a repayment agreement, either orally or in writing, which includes a repayment schedule; and

(b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.

(7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:

(a) Referral to a public or private sector collection agency;

(b) Lottery offsets;

(c) Wage garnishment;

(d) The intercept of unemployment compensation benefits;

(e) State income tax refund intercept; or

(f) The intercept of any eligible federal payment owed the debtor through the Treasury Offset Program (TOP).

(8) The cabinet shall:

(a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and

(b) Remove a recipient claim from TOP if the:

1. FNS or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;

2. Cabinet discovers that the debtor:

a. Is a member of a SNAP household undergoing benefit reduction; or

b. Has made an arrangement to resume payments; or

3. Claim:

a. Has been paid off;

b. Was disposed of through a hearing, termination, or compromise; or

c. Was referred to TOP in error.

#### Section 8. Delinquent Recipient Claims.

(1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:

(a) The claim has not been paid by the due date and a

satisfactory payment arrangement has not been made; or

(b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim shall be the due date on the:

(a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or

(b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.

(3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:

(a) Payment is received in full;

(b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or

(c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.

(4) A claim shall not be considered delinquent if:

(a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a claim shall not be subject to the requirements for delinquent debts.

(6) A claim awaiting a fair hearing decision shall not be considered delinquent.

(7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:

(a) Renotify the household of the claim; and

(b) Base delinquency on the due date of the subsequent notice.

(8) If a hearing official determines that a claim does not exist, the cabinet shall:

(a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and

(b) Send a KCD-1 to notify the household of the terminated claim.

#### Section 9. Compromising, Terminating, and Writing-off Claims.

(1) Except for a recipient claim that is established by a court of the appropriate jurisdiction, the cabinet may compromise a claim in accordance with 7 C.F.R. 273.18(e)(7).

(2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:

(a) The claim:

1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;

2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;

(b) All adult household members, as specified in Section 1(1) of this administrative regulation, die; or

(c) The cabinet is unable to locate the household.

#### Section 10. Restoration of Benefits.

(1) Benefits shall be restored to a household if the household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for an IPV that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from the date:

(a) The agency receives a request for restoration; or

(b) A final order is implemented, if no request for restoration is received.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding SNAP participants shall be restricted to an individual who meets the criteria specified in 7 C.F.R. 272.1(c).

Section 12. Retention of Records.

(1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:

- (a) In an orderly fashion, for audit and review purposes; and
- (b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:
  - 1. Month of origin of each record; or
  - 2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.

(2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13. Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14. Incorporation by Reference.

(1) "KCD-1, General Claims Notice", 1/17, is incorporated by reference.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2018, at 9:00 a.m. in Suites A & B, 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 December 14, 2018, 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 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for recipient claims, collection provisions, and additional provisions used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish criteria for recipient claims, collections, and additional administrative

provisions used by the cabinet for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing criteria for recipient claims, collections, and additional cabinet administrative provisions for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for recipient claims, collections, and additional administrative provisions used by the cabinet in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will allow for a six (6) year look-back period for SNAP overpayments as result of household errors and suspected fraud. In addition, the amendment lowers the monetary threshold used in the establishment of a claim from \$125 to seventy-five (75) dollars. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to improve claim collections for overpayments and fraud in SNAP, thereby supporting program integrity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its enhancement of claim, collection, and additional administrative provisions used by the cabinet in SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes through its clarification of claim types, collection, and other administrative provisions used by the cabinet in SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2018, there were 596,498 individuals comprising 273,621 households receiving SNAP benefits through the cabinet. At the end of June, there were nearly 62,000 active claims.

(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 no new action on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional look-back period and lower dollar threshold will amount to more and higher claims established against qualifying SNAP households.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, household errors will be further discouraged, and SNAP's programmatic integrity will be preserved.

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

(a) Initially: The amendment to this administrative regulation will result in additional administrative burden in the calculation of claims; however, the burden is anticipated to be absorbable within existing appropriations.

(b) On a continuing basis: The amendment to this administrative regulation is anticipated to be absorbable within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.



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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.18
2. State compliance standards. KRS 194A.010, 194A.050
3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.18
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### 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 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 194A.010, KRS 194A.050, 7 C.F.R. 271.4, 273.18
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? This administrative regulation will not generate revenue for state or local government during the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.
  - (c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.
  - (d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 Community Based Services Division of Family Support (Amendment)

#### 921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS Chapter 13B, 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for these violations. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

- (a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and
- (b) Include the issuance of an order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.
- (2) The cabinet shall retain:
  - (a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and
  - (b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

- (a) Initiate an administrative disqualification hearing; or
- (b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.
- (2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.
- (3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

- (a) Cabinet's suspicion that an IPV has been committed;
- (b) Amount and period of the overpayment for the suspected IPV; and
- (c) Household's right to an administrative disqualification hearing.
- (2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) ~~The cabinet shall use:~~

~~(a) The FS-80, 4/15, and the FS-80, Supplement A, 9/14; or~~

~~(b) On or after December 28, 2015, the FS-80, 12/15, and the FS-80, Supplement A, 12/15.~~

(5) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual; or

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050.

(6) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(7) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(8) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14.

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

(a) Conduct the hearing without the household member or representative;

(b) Consider the evidence; and

(c) Determine whether an intentional program violation was committed based on clear and convincing evidence.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

(a) Household was not represented at the hearing;

(b) Individual was determined to have committed an IPV;

(c) 1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) ~~Secretary or the secretary's designee~~ ~~[Appeal Board for Public Assistance]~~ is not considering the same matter.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or

(c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement,

pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) In accordance with 7 C.F.R. 273.17, restore benefits:

1. That were lost as a result of the disqualification; and

2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

(a) Consequences of consenting to disqualification;

(b) Disqualification; and

(c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

(a) Committed an IPV, as determined by:

1. An administrative disqualification hearing; or

2. A court; or

(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

(a) Administrative disqualification hearing determines that an IPV was committed; or

(b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

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

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012;

~~(b) ["FS-80, Notice of SNAP Suspected Intentional Program Violation", 4/15;~~

~~(c)] "FS-80, Notice of SNAP Suspected Intentional Program Violation", 12/15;~~

~~(d) ["FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 9/14;~~

~~(e)] "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 12/15; and~~

~~(d) [(f)] "FS-111, Deferred Adjudication Disqualification Consent Agreement", 9/14.~~

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on December 21, 2018, at 9:00 a.m. in Suites A & B, 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 December 14, 2018, 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 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, Phone: (502) 564-3703, Email: [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program (SNAP) and the penalties that shall be applied for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for determinations and penalties regarding SNAP IPV.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of procedures and penalties for SNAP IPV.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of SNAP IPV procedures and penalties.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will facilitate the transition of final orders from the Appeal Board for Public Assistance to the secretary or the secretary's designee. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to improve the timeliness of administrative hearings provided in SNAP, thereby avoiding federal corrective action, federal financial penalty, and hardship on appellants.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its improvement and support of timely SNAP administrative hearings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its facilitation of more timely SNAP hearings and congruency with hearings conducted for other public assistance programs administered by the department.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: There are approximately 1200 to 1300 administrative disqualification hearings conducted yearly.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required on the part of appellants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated new cost for appellants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will improve the timeliness of administrative hearings, thereby provisioning the appellant with a more timely decision on their case.

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

(a) Initially: There is no anticipated new cost for the administrative body to implement the regulatory amendment.

(b) On a continuing basis: There is no anticipated new cost for the administrative body to implement the regulatory amendment. The amendment is anticipated to preserve the state's federal SNAP funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal SNAP and state general funds are used for the implementation and enforcement of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.15

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.15

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

#### 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 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 13B.170, 194A.010, 194A.050, 7 C.F.R. 273.15

(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? This administrative regulation will generate no revenue for government in its first year.

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

(c) How much will it cost to administer this program for the first year? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**921 KAR 3:070. Fair hearings.**

RELATES TO: KRS Chapter 13B, 23A.010, 45.237, 205.231, 7 C.F.R. 273.15

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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 necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.15 requires the agency administering SNAP to provide a hearing system for any SNAP applicant or recipient who is dissatisfied with an agency decision or action. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program.

Section 1. Opportunity for Fair Hearing. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:

(a) On the part of the cabinet; and

(b) That affects the SNAP benefits of the household.

(2) A fair hearing shall be conducted:

(a) On a state level;

(b) By a hearing officer assigned by the Division of Administrative Hearings[~~, Families and Children Administrative Hearings Branch~~]; and

(c) At:

1. The local office administering the benefits of the appellant; or

2. An alternate site, if the appellant:

a. Is unable to travel to the local office; and

b. Requests an alternate site.

(3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.

(4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).

(5) An administrative hearing shall be conducted in accordance with KRS Chapter 13B, this administrative regulation, the Correspondence from the Office of Attorney General dated June 4, 2014, and the Correspondence from the Office of Attorney General dated April 5, 2012.

Section 2. Notification of Hearing Rights. (1) When a participant applies, he or she shall receive written notification of the:

(a) Right to a hearing;

(b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and

(c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:

1. Legal counsel;

2. A relative;

3. A friend; or

4. An individual to act on behalf of the participant.

(2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:

(a) An action is taken that affects the benefits of the participant;

or

(b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.

(3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. Timeframe for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a SNAP household may request a hearing on any cabinet action.

(3) If a hearing officer determines an appellant meets good cause criteria in accordance with Section 8 of this administrative regulation, the appellant shall be granted an additional thirty (30) days to submit a hearing request.

Section 4. Request for a Hearing. (1) The request for a hearing shall clearly state the reason for the request.

(2) If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.

(3) In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.

(4) Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:

(a) Help an appellant with a hearing request; and

(b) Make available, without charge, the materials necessary for an appellant to:

1. Determine whether a hearing may be requested; or

2. Prepare for a hearing.

(5) As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Notice of Hearing. (1) The Division of Administrative Hearings[~~, Families and Children Administrative Hearings Branch~~] shall acknowledge a hearing request by issuing a notice of hearing.

(2) The notice of the hearing shall:

(a) Comply with the requirements of KRS 13B.050(3), subject to the exemption granted by the attorney general in the Correspondence from the Office of Attorney General dated June 4, 2014. The notice shall provide all parties involved with ten (10)

days advance written notice of an administrative hearing, and the notice shall not be less than ten (10) days prior to the hearing, unless requested by the appellant;

(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and

(c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(l)(4), unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

(4) The appellant may:

(a) Waive the right to certified mail delivery under KRS 13B.050; and

(b) Select another method of delivery, such as electronic or first class mail.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:

(a) Acknowledge the request in accordance with Section 5 of this administrative regulation;

(b) Conduct a hearing; and

(c) Issue a final order.

(2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:

(a) Within ten (10) days of the final order; or

(b) With the next issuance following receipt of the final order.

(3) If an appellant requests a postponement of a hearing, the:

(a) Hearing shall be postponed;

(b) Postponement shall not exceed thirty (30) days from the request for the postponement; and

(c) Time limit for issuing a final order may be extended for the same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request does not meet the criteria specified in Section 3 of this administrative regulation;

(b) Appellant submits a written request to withdraw the hearing request; or

(c) Appellant or representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or

2. Establishing good cause for failure to appear as described[defined] in subsection (2) of this section, within ten (10) days.

(2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the notice;

(c) Moved, resulting in a delay in receiving or failure to receive the notice;

(d) Or other household member had a serious illness;

(e) Was not at fault for the delay, as determined by the hearing officer; or

(f) Did not receive the notice.

(3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Final Order of Dismissal by the Hearing Officer.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:

(a) Issues of the hearings are based on the same or related circumstances; and

(b) Appellant receives prior notice of the hearings being combined.

(2) If a fair hearing and an administrative disqualification hearing are combined, the:

(a) Timeframe for conducting an administrative disqualification hearing specified in 921 KAR 3:060, Section 4, shall be followed; and

(b) ~~Thirty (30) day advance notice period required by 921 KAR 3:060, Section 3, may be waived if requested by the appellant.~~

(3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:

(a) The amount of the claim; and

(b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:

(a) Individual issues of fact are not disputed; and

(b) The issues relate to the same state or federal:

1. Laws;

2. Administrative regulations; or

3. Policy.

(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.

(2) The appellant shall be informed that an agency conference:

(a) Is optional; and

(b) Shall not delay or replace the fair hearing process.

(3) A fair hearing shall be dismissed if:

(a) An agency conference leads to an informal resolution of the dispute; and

(b) The appellant makes a written withdrawal of the request for a hearing.

(4) An agency conference shall be attended by the:

(a) Appellant's caseworker;

(b) Local office supervisor; and

(c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:

(a) Examine:

1. The contents of the case file; and

2. All documents and records to be used at the hearing;

(b) Present the case or have the case presented by a representative or legal counsel;

(c) Bring witnesses, friends, or relatives;

(d) Present arguments without undue interference;

(e) Submit evidence to establish the pertinent facts and circumstances of the case; and

(f) 1. Question or refute testimony or evidence; and

2. Cross-examine an adverse witness.

(2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.

(3) Confidential information, such as the following, shall be protected from release:

(a) Names of individuals who have disclosed information about the appellant's household; and

(b) The nature or status of pending criminal prosecutions.

(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:

(a) Confidential information as specified in subsection (3) of this section;

(b) Documents, testimony, or records irrelevant to the hearing; and

(c) Other information for which the appellant is not provided an opportunity to contest or challenge.

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Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:

(a) Is employed by the cabinet's Division of Administrative Hearings[, Health and Family Services Administrative Hearings Branch]; and

(b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).

(2) When conducting a hearing, a hearing officer shall:

(a) Have the authority set forth in KRS 13B.080;

(b) In accordance with 7 C.F.R. 273.15(m), order an independent medical assessment or professional evaluation;

1. From a source:

a. [1.] Not associated with the original action; and

b. [2.] Agreeable to both the appellant and the cabinet; and

2. If:

a. The hearing involves medical issues; and

b. The hearing officer considers it necessary;

(c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 12[43];

(d) Issue an order:

1. In accordance with KRS 13B.110; and

2. As specified in Section 14 of this administrative regulation; and

(e) Issue a final order in accordance with under Section (7)[9] of this administrative regulation.

Section 14. Hearing Officer's Order. (1) After the hearing has concluded, the hearing officer shall draft an order that[which]:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the order; and

2. Address to which a party in the hearing may send an exception to the order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal regulations; and

(d) Addresses[5-Address] the parties' arguments.

(2) A copy of the order shall be sent simultaneously to the:

(a) Appellant or representative; and

(b) Department for Community Based Services, ['] Division of Family Support.

(3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q) sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 15 of this administrative regulation.

(4) If necessary, benefits of the appellant shall be adjusted:

(a) Based on a hearing officer's order that becomes a final order in accordance with subsection (3) of this section; and

(b) Within ten (10) days of the hearing officer's order becoming the final order.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the hearing officer's order, the party may file a written exception with the secretary or the secretary's designee[Appeal Board for Public Assistance established in accordance with KRS 205.231].

(2) A written exception or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the hearing officer's order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 16. Final Order. (1) Unless Section 14(3) of this administrative regulation applies, the secretary or the secretary's designee shall issue a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q).[Appeal Board Review. (1) The Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the hearing officer's

order to the:

(a) Parties to the hearing; and

(b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:

(a) Offer the opportunity to:

1. File a brief; or

2. Request permission to submit new or additional evidence; and

(b) State the tentative date on which:

1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and

2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.

Section 17. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), (q).

(2) If necessary, benefits of the appellant shall be adjusted:

(a) Based on the decision of the secretary or the secretary's designee[Appeal Board for Public Assistance]; and

(b) Within ten (10) days of the [Appeal Board for Public Assistance's] decision of the secretary or the secretary's designee.

(3) An aggrieved party may petition for judicial review in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010[A party aggrieved by the Appeal Board for Public Assistance's decision may pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150].

Section 17[48]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012; and

(b) The "Correspondence from the Office of Attorney General dated June 4, 2014", June 4, 2014.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 1, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2018, at 9:00 a.m. in Suites A & B, 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 December 14, 2018, 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 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2018. Send written notification of



intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone: (502) 564-3703, email: [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish SNAP fair hearing procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes through its establishment of fair hearing procedures for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the statutes through its establishment of SNAP fair hearing procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation modifies the final order authority from the Appeal Board for Public Assistance to the cabinet secretary or the secretary's designee. In addition, the amendment makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure timely SNAP fair hearings for regulated entities and to avoid federal financial penalty or correction action that may result from untimely hearings.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by ensuring timely fair hearings in accordance with federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its facilitation of improved timeliness for SNAP fair hearings and enhanced procedural congruency among hearings for public assistance programs administered by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is an average of 2,300 hearings for all public assistance programs, including SNAP, 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: There will be no new action required on the part of appellants.

(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 new cost required on the part of appellants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will improve the timeliness of

administrative hearings, thereby provisioning the appellant with a more timely decision on their case.

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

(a) Initially: There is no anticipated new cost for the administrative body to implement the regulatory amendment.

(b) On a continuing basis: There is no anticipated new cost for the administrative body to implement the regulatory amendment. The amendment is anticipated to preserve the state's federal SNAP funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal SNAP and state general funds are used for the implementation and enforcement of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.15

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.15

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

#### 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 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 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

(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? This administrative regulation will generate no revenue for government in its first year.

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

(c) How much will it cost to administer this program for the first

year? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to preserve federal funding and help the state avoid absorbing new costs associated with federal finding or financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(New Administrative Regulation)

**16 KAR 2:210. Provisional and Professional Certificate for Orientation and Mobility Specialist.**

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(1) vests the Education Professional Standards Board with the authority to certify all teachers and other professional school personnel in public schools. KRS 161.030(2) requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a certificate. KRS 161.030(1) requires all certificates to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the standards for the issuance of a certificate for the position of orientation and mobility specialist.

Section 1. Requirements for the Provisional Certificate for Orientation and Mobility Specialist.

(1) The provisional certificate for orientation and mobility specialist shall be issued to an applicant who has:

(a) A bachelor's degree or higher from a regionally accredited institution with:

1. A cumulative minimum grade point average of 2.75 on a 4.0 scale; or

2. A minimum grade point average of 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework.

(b) Completed coursework towards an approved preparation program from a regionally accredited institution for orientation and mobility specialists;

(c) A valid Academy of Certification of Vision Rehabilitation and Educational Professional (ACVREP) certification in orientation and mobility; and

(d) An offer of employment from a Kentucky school district or accredited nonpublic school as an orientation and mobility specialist.

(2) To apply for the provisional certificate for orientation and mobility specialist, the applicant shall submit a completed Form CA-1 to the Education Professional Standards Board.

(3) The provisional certificate for orientation and mobility specialist shall be issued for a validity period of one (1) year.

(4) The provisional certificate for orientation and mobility specialist shall be valid for providing orientation and mobility services for all grade levels.

(5) To renew the provisional certificate for orientation and mobility specialist, the applicant shall:

(a) Submit a completed Form CA-2 to the Education Professional Standards Board;

(b) Maintain current ACVREP certification;

(c) Have an offer of employment from a Kentucky school district or accredited nonpublic school as an orientation and mobility specialist; and

(d) Provide proof of completion of one-half of the requirements of Section 2(1)(c).

Section 2. Requirements for the Professional Certificate for Orientation and Mobility Specialist.

(1) The professional certificate for orientation and mobility specialist shall be issued to an applicant who has:

(a) A bachelor's degree or higher from a regionally accredited institution with:

1. A cumulative minimum grade point average of 2.75 on a 4.0 scale; or

2. A minimum grade point average of 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework;

(b) Completed an approved preparation program from a

regionally accredited institution for orientation and mobility specialists;

(c) Successfully completed:

1. A minimum of 150 hours of an internship working with children under the supervision of an ACVREP certified orientation and mobility specialist; or

2. A minimum of 150 hours work experience as an orientation and mobility specialist providing services to children; and

(d) A valid ACVREP certification in orientation and mobility.

(2) To apply for the professional certificate for orientation and mobility specialist, the applicant shall submit a completed Form CA-1 to the Education Professional Standards Board.

(3) The professional certificate for orientation and mobility specialist shall be issued for a validity period of five (5) years.

(4) The professional certificate for orientation and mobility specialist shall be valid for providing orientation and mobility services for all grade levels.

(5) To renew the professional certificate for orientation and mobility specialist, the applicant shall:

(a) Submit a completed Form CA-2 to the Education Professional Standards Board; and

(b) Maintain current ACVREP certification.

Section 3. Requirements for an Approved Program of Preparation.

(1) The approved program of preparation shall be based upon the orientation and mobility curricular standards defined by the Association of the Education and Rehabilitation of the Blind and Visually Impaired (AER).

(2) The program of preparation shall be submitted to the Education Professional Standards Board for approval pursuant to the requirements established in 16 KAR 5:010.

(3) The program of preparation shall be submitted through the educator preparation provider.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form CA-1, 10/18;

(b) Form CA-2, 10/18; and

(c) O&M Curricular Standards of the Association of the Education and Rehabilitation of the Blind and Visually Impaired, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: October 8, 2018

FILED WITH LRC: November 15, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 11:00 a.m. Eastern Time at the Kentucky Department of Education, 300 Sower Blvd, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. 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: Cassie Trueblood, Policy Advisor and Special Counsel, Office of Educator Licensure and Effectiveness, 300 Sower Blvd, Fifth Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email [cassie.trueblood@ky.gov](mailto:cassie.trueblood@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassie Trueblood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Kentucky certification for Orientation and Mobility Specialist.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that there are certified individuals to fill the role of Orientation and Mobility Specialist in Kentucky Schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for initial certification and renewal of certification for Orientation and Mobility Specialists.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

(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: Applicants will have to submit to the Education Professional Standards Board the appropriate application form and meet the requirements for issuance of the certificate. School districts and students will not have to take any actions 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): There is no expected cost for applicants in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Orientation and Mobility Specialists will have a pathway to certification allowing them to gain certified employment in the Kentucky schools. School districts and students will have access to certified individuals to provide instruction relating to safe and effective travel skills within the environments in school, home and the community settings for the blind and visually impaired students in Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: At this time, no increase in fees or funding is expected to be needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. All candidates for certification for Orientation and Mobility Specialists shall meet these requirements.

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 Education Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028 and KRS 161.030.

(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 should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

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

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of 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: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(Repealer)

**103 KAR 16:151. Repeal of 103 KAR 16:100, 103 KAR 16:110, 103 KAR 16:120, 103 KAR 16:130, 103 KAR 16:145, and 103 KAR 16:150.**

RELATES TO: KRS 141.120

STATUTORY AUTHORITY: KRS 131.130, 141.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(10)(b) requires the Department of Revenue to provide guidance on the apportioning of income of interstate telephone and telegraph companies, interstate pipeline companies, interstate transportation companies, and interstate businesses. HB 487 passed during the 2018 session of the Kentucky General Assembly changed the way these businesses are now taxed in the Commonwealth. Sufficient guidance for the treatment of income for these companies is now found in statute or other department regulations. Therefore, these administrative regulations are no longer needed and will not be amended in the future.

Section 1. The following regulations are hereby repealed:

(1) 103 KAR 16:100, Apportionment and allocation; telephone

and telegraph companies;

(2) 103 KAR 16:110, Apportionment and allocation; pipeline companies;

(3) 103 KAR 16:120, Apportionment and allocation; certain transportation companies;

(4) 103 KAR 16:130, Apportionment and allocation; railroad companies;

(5) 103 KAR 16:145, Apportionment and allocation; barge line companies; and

(6) 103 KAR 16:150, Apportionment and allocation; financial organizations and loan companies.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 14, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. 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: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 782-6081, fax (502) 564-3875, email [Todd.Renner@ky.gov](mailto:Todd.Renner@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Lisa Swiger, phone (502)564-9526, email [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov); and Todd Renner

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 16:100, 103 KAR 16:110, 103 KAR 16:120, 103 KAR 16:130, 103 KAR 16:145 and 103 KAR 16:150. These regulations either no longer have statutory authority, or the statutes now contain sufficient language that these regulations are no longer needed.

(b) The necessity of this administrative regulation: HB 487 of the 2018 General Assembly eliminated the property, payroll and 3-factor allocation for the industries affected by these regulations. The new statutory language is very clear in its guidance for determining income, so further regulatory guidance in these regulations is no longer needed. Pursuant to KRS 13A, it is necessary to remove regulations from existence that either no longer have statutory authority or that an agency does not foresee amending in the future.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It removes outdated guidance from regulatory language to be in step with new law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with HB 487, KRS 141.120 and KRS 13A.

(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: None.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied since no regulated entities will be affected by the repeal of this administrative regulation.

#### 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? Only the Finance and Administration Cabinet, primarily the Department of Revenue, will be impacted by the repeal of these regulations because we will no longer need to update outdated or unnecessary regulations.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

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 will be no effect on expenditures and revenues for state or local government 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? None. This administrative regulation is repealing guidance that is no longer necessary or allowed because of statutory changes codified in HB 487 of the 2018 session of the Kentucky General Assembly.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



**GENERAL GOVERNMENT CABINET**  
**Board of Nursing**  
**(Repealer)**

**201 KAR 20:226. Repeal of 201 KAR 20:235, 201 KAR 20:420, 201 KAR 20:430, 201 KAR 20:440, AND 201 KAR 20:460.**

RELATES TO: KRS 314.105, KRS 314.181

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the Board of Nursing to promulgate administrative regulations. 201 KAR 20:235 is being repealed because it is out of date. 201 KAR 20:420, 430, and 440 are being repealed because the authorizing statute, KRS 314.181, was amended. 201 KAR 20:460 is being repealed because the authorizing statute, KRS 314.105, was repealed.

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 20:235;
- (2) 201 KAR 20:420;
- (3) 201 KAR 20:430;
- (4) 201 KAR 20:440; and
- (5) 201 KAR 20:460.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email [Megan.LaFollette@ky.gov](mailto:Megan.LaFollette@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals several administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the administrative regulations being repealed are no longer necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing unnecessary administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing unnecessary administrative regulations.

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

(a) How the amendment will change this existing administrative

regulation: 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: N/A

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(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) 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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(New Administrative Regulation)**

**201 KAR 20:362. Fines for programs of nursing.**

RELATES TO: KRS 314.111(4)

STATUTORY AUTHORITY: KRS 314.111(4), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(4) authorizes the Board to fine a program of nursing that fails to comply with the requirements of the administrative regulations governing programs of nursing.

**Section 1. Definitions.**

(1) "Deficiency" means a failure to meet a standard set by 201 KAR 20:260 through 360.

(2) "Compliance issue" means a failure to comply with a requirement of 201 KAR 20:260 through 360.

**Section 2. (1)** A program of nursing is in violation of KRS 314.111(4) when it:

- (a) Receives notice of a deficiency or a compliance issue;
- (b) Is given the expectation of the board for correction;
- (c) Is given a date by which the correction is expected; and
- (d) Fails to make the correction by that date.

(2) A program of nursing shall comply with all deadlines set by 201 KAR 20:260 through 20:360. Failure to do so shall constitute a compliance issue.

**Section 3. (1)** The fine for a violation of KRS 314.111(4) shall be \$500 per day or portion thereof.

(2) The board shall send notice of the amount due to the program of nursing.

(3) The program shall either:

- (a) remit the amount due within thirty (30) days; or
- (b) request an administrative hearing in accordance with KRS Chapter 13B to contest the fine.

(4) Failure to take either step shall subject the program of nursing to:

- (a) A collection action in the court of competent jurisdiction; or
- (b) An administrative hearing in accordance with KRS Chapter 13B to determine whether the program of nursing shall be closed.

KELLY JENKINS, President

APPROVED BY AGENCY: October 18, 2018

FILED WITH LRC: October 23, 2018 at 1 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.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 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 end of day (11:59 p.m.) December 31, 2018. 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:** Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email Megan.LaFollette@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Megan LaFollette

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the process and procedure for imposing fines on programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111(4), which was added in 2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing the statute.

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

(a) How the amendment will change this existing administrative regulation: 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: Programs of nursing, approximately 150.

(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 comply with the standards or have a fine imposed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative 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. However, it implements the statutory provision regarding the imposition of fines.

(9) **TIERING:** Is tiering applied? Tiering was not applied as the changes apply to all equally.

**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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, KRS 314.131.

(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? Unknown

(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? Unknown

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## BOARDS AND COMMISSIONS

### Board of Licensure for Marriage and Family Therapists (New Administrative Regulation)

#### 201 KAR 32:110. Telehealth.

RELATES TO: KRS 335.305, 335.310, 335.320, 335.325, 335.380, 335.399

STATUTORY AUTHORITY: KRS 335.310, 335.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.380 requires the board to promulgate administrative regulations to govern telehealth services in the provision of marriage and family therapy services. This administrative regulation establishes procedures for the use of telehealth by licensees.

#### Section 1. Definitions.

(1) "Asynchronous" means a communication that does not occur simultaneously in real time.

(2) "Electronic communication" means the use of websites, cell phones, email, texting, online social networking, video, or other digital methods and technology used to send and receive messages or post information.

(3) "Encryption" means a mathematical process that converts text, video, or audio streams into a scrambled, unreadable format when transmitted electronically.

(4) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

(5) "HITECH" means the Health Information Technology for Economic and Clinical Health Act of 2009.

(6) "Social media" means a Web-based communication tool that enables people to interact with each other by both sharing and consuming information.

(7) "Synchronous" means a communication that occurs simultaneously in real time.

#### Section 2. Standard of Practice and Competency.

(1) Standard of appropriate practice. A marriage and family therapist providing telehealth services in this state shall be held to the same standards of practice as those applicable for in person therapy settings.

(2) Competency. A marriage and family therapist shall only provide telehealth services in this state in those instances in which the marriage and family therapist has technical and clinical competency to render such services.

(3) Continued competency. A marriage and family therapist providing telehealth services in this state shall have an ongoing obligation to assess their technical and clinical competency to render such services.

#### Section 3. Education and Continuing Education Requirements.

(1) Initial training. Effective January 1, 2020, a licensed marriage and family therapist providing telehealth services in this state shall have completed fifteen (15) hours of board-approved

training in the practice of telehealth, which shall include three (3) hours of ethics in the practice of telehealth.

(2) Continuing education. A licensed marriage and family therapist who has completed the initial training in the practice of telehealth shall complete at least two (2) credit hours of board-approved continuing education in the practice of telehealth during each subsequent licensure renewal period.

(3) Credit hours earned to comply with subsections (1) and (2) above may be applied to continuing education requirements set forth in 201 KAR 32:060.

Section 4. Verification of the Client. Prior to providing telehealth services in this state a marriage and family therapist shall take appropriate steps to verify the identity of the client.

#### Section 5. Client Assessment.

(1) Initial assessment. Prior to providing telehealth services in this state a marriage and family therapist shall conduct an initial assessment of the client to determine if telehealth is an appropriate delivery of treatment considering the professional, intellectual, or emotional needs of the client.

(2) Ongoing assessment. Throughout the duration of providing telehealth services in this state a marriage and family therapist shall engage in a continual assessment of the appropriateness of providing such services to the client.

(3) Telehealth may not be appropriate if the client:

(a) Recurrently experiences, or is likely to experience, crises or emergencies;

(b) Is a suicide risk, or likely to become a suicide risk;

(c) Is violent, or likely to become violent; or

(d) Otherwise poses a risk to themselves or to others.

#### Section 6. Informed Consent.

(1) Generally. Prior to providing telehealth services in this state, the marriage and family therapist providing such services shall obtain the informed consent of the client, which shall include:

(a) Disclosure of specific information regarding the marriage and family therapist's:

1. Training and credentials;

2. License number;

3. Physical location and contact information;

4. Social media policy;

5. Encryption policy; and

6. Collection, documentation, tracking, and storage of client information;

(b) Client confidentiality and the limits to confidentiality in electronic communication;

(c) Information on reporting complaints to the board and other appropriate licensing bodies;

(d) The specific services to be provided;

(e) The risks and benefits of engaging in telehealth in the clinical setting;

(f) The possibility of technology failure and alternate methods of service delivery;

(g) Time zone differences, if any;

(h) Cultural or language differences that may affect the delivery of services;

(i) The possible denial of insurance benefits;

(j) The pertinent legal rights and limitations governing practice across state lines or international boundaries, where appropriate; and

(k) Whether delivery of service will be asynchronous or synchronous.

(2) Minors. If the client is a minor, prior to providing telehealth services in this state the marriage and family therapist shall verify the identity of the parent, guardian, or other person consenting to the minor's treatment and obtain from that person the informed consent required by this section.

Section 7. Emergency procedures, Coordination of Care and Referrals. Prior to providing telehealth services in this state, the marriage and family therapist shall establish with the client:

(1) Acceptable ways to contact the marriage and family

therapist in an emergency;

(2) Emergency procedures to include emergency services at the client's location;

(3) Coordination of care with other professionals; and

(4) Conditions under which telehealth services may be terminated and a referral made to in-person care.

Section 8. Compliance with Privacy Laws, Documentation and Recordkeeping. A marriage and family therapist performing telehealth services in this state shall:

(1) Comply with all privacy laws and regulations relating to the transmission and protection of protected health information, including HIPAA and HITECH; and

(2) Comply with all state and federal laws and regulations relating to the practice of telehealth, and the documentation of services delivered and recordkeeping related thereto.

MARY BADAMI, Chair

APPROVED BY AGENCY: November 9, 2018

FILED WITH LRC: November 9, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.m. at 911 Leewood Dr., Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Bryan Morrow, Board Counsel, 656 Chamberlin Ave., Suite B, phone (502) 564-7760, fax (502) 564-3969, email [bryan.morrow@ky.gov](mailto:bryan.morrow@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bryan Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth. This administrative regulation establishes procedures and education requirements for licensees to provide telehealth services to patients in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 335.380(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth, including: (1) preventing abuse and fraud through the use of telehealth services; (2) preventing fee-splitting; and (3) utilizing telehealth in the provision of marriage and family therapy services and in the provision of continuing education. This administrative regulation prevents fraud and abuse in six ways: (1) applying standards for in-person counseling to telehealth; (2) requiring verification of the client; (3) requiring an initial assessment to ensure the client is a proper candidate for telehealth services; (4) making that assessment an on-going concern; (5) obtaining the informed consent of the client; and (6) establishing procedures for the client in case of an emergency. The regulation does not address fee-splitting, because that issue is covered in an existing regulation. Finally, the regulation sets forth education and continuing education requirements specific to telehealth services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS 335.380 by carrying out the legislative mandate for the board to establish a regulation

regarding telehealth 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: 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 regulation will affect 705 licensed Marriage and Family Therapist and Marriage and Family Therapist Associates in Kentucky, as well as any Marriage and Family Therapists from other jurisdictions seeking to provide telehealth to patients located in Kentucky.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: In order to use telehealth to practice marriage and family therapy in Kentucky, each licensee will be required to complete initial training and continuing education each subsequent year. The licensed therapist will also have to verify the client, continuously assess the client as an appropriate recipient of telehealth, obtain consent from the client, establish emergency procedures, and ensure compliance with applicable privacy laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensee. Licensee education and continuing education requirements are already in place as part of 201 KAR Chapter 32. The education and continuing education requirements specific to telehealth will count toward those hours licensees are already required to obtain.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees and clients will be permitted to engage in telehealth, increasing access and availability of needed services.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body; a licensee that provides telehealth will be governed by the same licensure process as a Marriage and Family Therapist in an office setting.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body; a licensee that provides telehealth will be governed by the same licensure process as a Marriage and Family Therapist in an office setting.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Marriage and Family Therapy Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

#### 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 Board of Licensure for Marriage and Family Therapists will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.380

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

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

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

(c) How much will it cost to administer this program for the first year? A licensee providing telehealth services will abide by the same licensure process as a Marriage and Family Therapist in an office setting so there will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? A licensee providing telehealth services will abide by the same licensure process as a Marriage and Family Therapist in an office setting so 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**GENERAL GOVERNMENT CABINET  
Department of Agriculture  
Office of the Commissioner  
(Repealer)**

**302 KAR 1:011. Repeal of 302 KAR 1:010, 302 KAR 1:020, 302 KAR 1:030, 302 KAR 1:035, 302 KAR 1:040, 302 KAR 1:050, 302 KAR 1:055, 302 KAR 1:070, and 302 KAR 1:080.**

RELATES TO: KRS Chapter 247

STATUTORY AUTHORITY: KRS 247.555, 247.755, 247.655, 247.859, 247.853, 247.483, 247.4469, 247.6017, 247.5075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.555, 247.755, 247.655, 247.859, 247.853, 247.483, 247.4469, 247.6017, 247.5075 each authorizes the commissioner to establish and determine the rules and administrative regulations to conduct a referendums among the producers of agricultural products for the purpose of promoting and stimulating by utilization research, market maintenance, and expansion and education, the existing use and sale, domestic and foreign, of those products. This administrative regulation repeals 302 KAR 1:010, 302 KAR 1:020, 302 KAR 1:030, 302 KAR 1:035, 302 KAR 1:040, 302 KAR 1:050, 302 KAR 1:055, 302 KAR 1:070, and 302 KAR 1:080 because each vote was held and voted affirmatively, any new request would require a completely new administrative regulation making this administrative regulation not needed.

Section 1. The following administrative regulations hereby repealed:

- (1) 302 KAR 1:010, Referendum;
- (2) 302 KAR 1:020, Burley tobacco;
- (3) 302 KAR 1:030, Bovine animals;
- (4) 302 KAR 1:035, Eggs;

- (5) 302 KAR 1:040, Manufacturing grade milk;
- (6) 302 KAR 1:050, Grade A milk;
- (7) 302 KAR 1:055, Milk referendum;
- (8) 302 KAR 1:070, Corn referendum; and
- (9) 302 KAR 1:080, Small grain producers referendum.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the administrative regulations for former agriculture product assessment votes in Kentucky.

(b) The necessity of this administrative regulation: The votes for each regulation have been held, thus the necessity for the administrative regulations no longer exist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.555, 247.755, 247.655, 247.859, 247.853, 247.483, 247.4469, 247.6017, and 247.5075 each set forth the requirements for the Commissioner to publish and promulgate for each vote. With those votes being held a number of years ago, this repealer filing repeals unneeded administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of HB50.

(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: The Kentucky Department of Agriculture only. Groups receiving assessment dollars will not be effected.

(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 KDA will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA, and statutory compliance.

(5) Provide an estimate of how much it will cost the implementation and enforcement of this administrative regulation:

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are 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 fees are associated with this repealer.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### 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 Kentucky Department of Agriculture

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.555, 247.755, 247.655, 247.859, 247.853, 247.483, 247.4469, 247.6017, 247.5075.

(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 are no anticipated impacts to state or local government associated with this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Department of Agriculture Office of the Commissioner (Repealer)

**302 KAR 77:011. Repeal of 302 KAR 77:010 and 302 KAR 77:030.**

RELATES TO: KRS Chapter 247

STATUTORY AUTHORITY: KRS 247.430, 247.391

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.430 and KRS 247.391 authorizes the Commissioner to establish certain rules for tobacco auctions. This administrative regulation repeals

KRS 247.430 and KRS 247.391 because changes in tobacco marketing have dramatically reduced auction use, making this administrative regulation not needed.

Section 1. The following administrative regulations hereby repealed:

(1) 302 KAR 77:010; and

(2) 302 KAR 77:030.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the administrative regulations for tobacco marketing rules.

(b) The necessity of this administrative regulation: Tobacco marketing in the Commonwealth has gone almost exclusively to private contracts, thus the necessity for the administrative regulations no longer exist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.430 and 247.391 each set forth the requirements for tobacco marketing. The markets for tobacco are virtually all direct contract now, and this repealer filing repeals unneeded administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-needed administrative regulation, helping the KDA comply with the intent of HB50.

(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: The Kentucky Department of Agriculture only. Any current or future tobacco auction will need to do nothing to comply.

(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 KDA will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA, and statutory compliance.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are 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 fees are associated with this repealer.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### 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 Kentucky Department of Agriculture

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.430 and KRS 247.391

(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 are no anticipated impacts to state or local government associated with this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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 Juvenile Justice (New Administrative Regulation)

**505 KAR 1:180. Department of Juvenile Justice Policy and Procedures Manual: day treatment services.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7),

635.500, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Day Treatment Services", November 8, 2018 is incorporated by reference and includes the following:

- 1000 Definitions (Added 11/08/18);
- 1001 Programs and Services (Added 11/08/18);
- 1002 Admissions (Added 11/08/18);
- 1003 Intake and Orientation (Added 11/08/18);
- 1004 Correspondence to the Court System (Added 11/08/18);
- 1005 Student's Dress Code and Personal Property (Added 11/08/18);
- 1006 Family and Community Contacts: Telephone and Visitation (Added 11/08/18);
- 1007 Level System (Added 11/08/18);
- 1008 Individual Treatment Plan (Added 11/08/18);
- 1009 Treatment Team Composition, Function, and Responsibility (Added 11/08/18);
- 1010 Counseling Services (Added 11/08/18);
- 1011 Family Engagement (Added 11/08/18);
- 1012 Individual Client Records (Added 11/08/18);
- 1013 Progress Notes (Added 11/08/18);
- 1014 Behavior Management (Added 11/08/18);
- 1015 Graduated Responses, Sanctions, and Incentives (Added 11/08/18);
- 1016 Restraints (Added 11/08/18);
- 1017 Searches (Added 11/08/18);
- 1018 Contraband, Seizure, and Chain of Custody (Added 11/08/18);
- 1019 Incident Reporting (Added 11/08/18);
- 1020 Grievance Procedure (Added 11/08/18);
- 1021 Staff Requirements for the Supervision of Students (Added 11/08/18);
- 1022 Instructional Staffing (Added 11/08/18);
- 1023 Educational Records (Added 11/08/18);
- 1024 Educational Programming, Assessment, and Transition (Added 11/08/18);
- 1025 Evaluation of Integrated Educational and Vocational Plan (Added 11/08/18);
- 1026 Technical Education Safety (Added 11/08/18);
- 1027 Library Services (Added 11/08/18);
- 1028 Recreation (Added 11/08/18);
- 1029 Work Programs (Added 11/08/18);
- 1030 Drug Screening and Testing (Added 11/08/18);
- 1031 Transportation of Students (Added 11/08/18);
- 1032 Use of Non-Governmental Funds and Youth Activity Funds Account (Added 11/08/18); and
- 1033 Youth Council (Added 11/08/18).

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

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: November 5, 2018

FILED WITH LRC: November 8, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m. Eastern Time, at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the



hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. The hearing is open to the public. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email [William.Codell@ky.gov](mailto:William.Codell@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(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 the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers, contracted educational staff, and students enrolled in Department operated day treatment programs.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067 and the American Correctional Association 4th Edition Standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of program services within day treatment programs in the Department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees, contracted educational staff, and enrolled students as to their duties, rights, privileges and responsibilities.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: approximately 65 employees and 36 contracted education staff, approximately 160 enrolled students, and all visitors and volunteers to DJJ day treatment programs.

(4) Provide analysis of how the entities identified in question (3) will be impacted by 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: DJJ day treatment programs will need to update their facility Standard Operating Procedures to comply with this new administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each program will absorb the cost of updating procedures and training staff on updated policies. No monetary cost will be incurred by the enrolled students, employees, contracted educational staff, or volunteers of the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To ensure a clearer understanding of the policies and procedures by DJJ employees, contracted educational staff, and enrolled students, thereby impacting the educational environment ensuring that it will be

conducive to instruction and learning, and the security and safety of the agency and the public.

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

(a) Initially: No additional cost is projected.

(b) On a continuing basis: No additional cost is projected.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if necessary. No additional funding is required, however any associated training or staff allocations will come from the Department of Juvenile Justice General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering: Is tiering applied? No. Tiering 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 the Sections 2 and 3 of the Kentucky Constitution.

#### 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? Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.0652, 15A.0654, 15A.067, 600.040, 605.090, 605.095, 605.100, 605.110(3), 605.150, 635.060, 635.095, 635.100, 635.520, 640.120, 645.250

(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. The new administrative regulation is not projected to result in any additional expenditures or revenue.

(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? Response: 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? Response: None

(c) How much will it cost to administer this program for the first year? Response: No additional cost is projected.

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

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 Alcoholic Beverage Control (Repealer)

804 KAR 11:031. Repeal of 804 KAR 11:030.

RELATES TO: KRS 241.060

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. This administrative regulation repeals 804 KAR 11:030 because the necessary substantive provisions of that administrative regulation are more efficiently relocated into 804 KAR 1:070, consolidating all administrative regulations relating to educational sampling of alcoholic beverages.

Section 1. The following administrative regulation is hereby repealed:

(1) 804 KAR 11:030, Beer tastings.

CHRISTINE TROUT VAN TATENHOVE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email [Lee.Walters@ky.gov](mailto:Lee.Walters@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Lee Walters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 804 KAR 11:030.

(b) The necessity of this administrative regulation: In conjunction with the filing of this repealer, the Board is filing a proposed amendment to 804 KAR 1:070 that incorporates necessary substantive provisions previously contained in 804 KAR 11:030. The regulation amendment and repealer will combine and provide uniformity of requirements for educational sampling events.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the supervision and control of the use and sale of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will allow licensees to more easily find all requirements for educational sampling events in one regulation. Consolidation will provide needed uniformity of requirements for all educational sampling events regarding all alcoholic beverage types.

(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 repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer will affect all holders of the 16,000 plus state licenses issued by the department.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will not be required to take any additional actions as result of the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated cost to licensees resulting from the repeal this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will find all requirements for educational sampling events in one location. Licensees will also be benefited by uniformity of requirements for all educational sampling events regarding all alcoholic beverage types.

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

(a) Initially: There are no anticipated costs associated with the implantation of this repealer.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source of funding is needed to implement and enforce the repeal of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied.

#### 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 Department of Alcoholic Beverage Control and local alcoholic beverage control administrators will be affected 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 241.060 entitles the board to promulgate reasonable administrative regulations governing procedures relative to the supervision and control of the use, sale and advertising of alcoholic beverages.

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? This repealer will not generate revenue for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this repealer for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this repealer for

subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: This is a repealer.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Repealer)**

**810 KAR 1:301. Repeal of 810 KAR 1:004; 1:005; 1:007; 1:008; 1:009; 1:010; 1:012; 1:014; 1:015; 1:016; 1:017; 1:018; 1:021; 1:024; 1:025; 1:026; 1:027; 1:028; 1:029; 1:030; 1:037; 1:040; 1:050; 1:060; 1:070; 1:080; 1:090; 1:100; 1:110; 1:130; 1:140; 1:145; 1:150; 1:300.**

RELATES TO: KRS 230.225(5)

STATUTORY AUTHORITY: KRS 230.215

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. 810 KAR 1:004; 1:005; 1:007; 1:008; 1:009; 1:010; 1:012; 1:014; 1:015; 1:016; 1:017; 1:018; 1:021; 1:024; 1:025; 1:026; 1:027; 1:028; 1:029; 1:030; 1:037; 1:040; 1:050; 1:060; 1:070; 1:080; 1:090; 1:100; 1:110; 1:130; 1:140; 1:145; 1:150; and 1:300. The necessary content of these repealed provisions has been moved to subject-matter specific administrative regulations within KAR Title 810.

Section 1. The following regulations are hereby repealed:

- (1) 810 KAR 1:004, Stewards;
- (2) 810 KAR 1:005, Racing officials;
- (3) 810 KAR 1:007, Owners;
- (4) 810 KAR 1:008, Trainers;
- (5) 810 KAR 1:009, Jockeys and apprentices;
- (6) 810 KAR 1:010, Authorized agents;
- (7) 810 KAR 1:012, Horses;
- (8) 810 KAR 1:014, Weights;
- (9) 810 KAR 1:015, Claiming races;
- (10) 810 KAR 1:016, Running of the race;
- (11) 810 KAR 1:017, Objections and complaints;
- (12) 810 KAR 1:018, Medication; testing procedures; prohibited practices;
- (13) 810 KAR 1:021, Backside Improvement Fund;
- (14) 810 KAR 1:024, Racing Commission;
- (15) 810 KAR 1:025, Licensing thoroughbred racing;
- (16) 810 KAR 1:026, Racing associations;
- (17) 810 KAR 1:027, Entries, subscriptions, and declarations;
- (18) 810 KAR 1:028, Disciplinary measures and penalties;
- (19) 810 KAR 1:029, Hearings, reviews, and appeals;
- (20) 810 KAR 1:030, Simulcast facilities;
- (21) 810 KAR 1:037, Licensing of racing associations conducting thoroughbred racing;
- (22) 810 KAR 1:040, Drug, medication, and substance classification schedule and withdrawal guidelines
- (23) 810 KAR 1:050, Steeplechase racing;
- (24) 810 KAR 1:060, Chemical dependency,
- (25) 810 KAR 1:070, Kentucky Thoroughbred Breeders' Incentive Fund;

- (26) 810 KAR 1:080, International wagering hubs;
- (27) 810 KAR 1:090, Kentucky Thoroughbred Development Fund;
- (28) 810 KAR 1:100, Frivolous appeals;
- (29) 810 KAR 1:110, Out of competition testing;
- (30) 810 KAR 1:130, Post-race sampling and testing procedures;
- (31) 810 KAR 1:140, Calculation of payouts and distribution of pools;
- (32) 810 KAR 1:145, Advance deposit account wagering;
- (33) 810 KAR 1:150, Licensing totalizator companies; and
- (34) 810 KAR 1:300, International medication protocol as a condition of a race.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018, at 1:30 p.m., at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. 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 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 if received at or before 11:59 p.m. on December 31, 2018. 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: John Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Bldg. B, Lexington, Kentucky 40511, phone (859) 246-2040, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals several administrative regulations within 810 KAR Chapter 1 because contemporaneous amendments to the horse racing regulatory regime will render the individual regulations unnecessary. Specifically, this administrative regulation repeals 810 KAR 1:004; 1:005; 1:007; 1:008; 1:009; 1:010; 1:012; 1:014; 1:015; 1:016; 1:017; 1:018; 1:021; 1:024; 1:025; 1:026; 1:027; 1:028; 1:029; 1:030; 1:037; 1:040; 1:050; 1:060; 1:070; 1:080; 1:090; 1:100; 1:110; 1:130; 1:140; 1:145; 1:150; and 1:300. These administrative regulations are no longer required because by separate regulation amendments, the content has been moved to subject-matter specific regulations within this chapter.

(b) The necessity of this administrative regulation: This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing horse racing in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.515 authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing horse racing in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky

Horse Racing Commission is charged with the responsibility to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. This administrative regulation, in concert with contemporaneously filed administrative regulations, are necessary to carry out Chapter 230 of the Kentucky Revised Statutes with a revised and improved regulatory regime governing horse racing 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: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, licensed participants in racing in Kentucky, the seven Kentucky racetracks, and the wagering public will be affected by this administrative regulation. During the year 2017, the Commission licensed 22,745 individuals to participate in horse racing. The numbers of licensees are consistent from year to 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: This administrative regulation requires no action by the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not require any action from the entities identified in question 3.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative 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: There is no funding necessary to implement this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repeals the subject administrative regulations, and all regulated entities are treated equally.

#### 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 Kentucky Horse

Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215.

(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? This administrative regulation will not generate any revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation for subsequent years.

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

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 2:001. Definitions for 810 Chapter 2.

RELATES TO: 810 KAR Chapter 2

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 2.

Section 1. Definitions. (1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default incident to KAR Title 810.

(3) "Association" is defined by KRS 230.210(1).

(4) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(5) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811 KAR 4:050 and 810 KAR 5:030

(6) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(7) "Commission" means:

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

(b) The amount an association is authorized to withhold from a

pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded does exceed the number of starters in the dash.

(10) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Declaration" means:

(a) in flat racing, the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with Title 810 KAR..

(b) in standardbred racing, the naming of a particular horse as a starter in a particular race.

(12) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money;

(g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(13) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(14) "Draw" means the process of determining post positions by lot. .

(15) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(16) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(17) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(18) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(19) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during which pari-mutuel wagering is permitted.

(20) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(21) "Foul" means any action by any jockey or driver that tends to hinder another jockey or any horse in the proper running of the race.

(22) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

(a) Age;

(b) Sex;

(c) Claiming price; or

(d) Performance.

(23) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(24) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(25) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(26) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(27) "Inquiry" means an investigation by the stewards or judges

of a contest prior to declaring the result of the contest official.

(28) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(29) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(30) "Licensed premises" means the location and physical plant described in response to question R of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

(31) "Licensee" means an individual, firm, association, partnership, corporation, limited liability company, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(32) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(33) "Month" means calendar month.

(34) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(35) "Nominator" means the person in whose name a horse is entered for a stakes race.

(36) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(37) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(38) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(39) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(40) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.

(41) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(42) "Post" means the starting point of a race.

(43) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(44) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(45) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

(46) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(47) "Purse" means the gross cash portion of the prize for which a race is run.

(48) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

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

(50) "Racing official" means a racing commission member,



commission staff as duties require, and all association racing department employees, as duties require.

(51) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(52) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(53) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(54) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(55) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(56) "Simulcasting" is defined by KRS 230.210(11).

(57) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(58) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(59) "Subscription" means nomination or entry of a horse in a stakes race.

(60) "Suspended" means withdrawal by the steward or commission of racing privileges.

(61) "Thoroughbred racing" is defined by KRS 230.210(3).

(62) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(63) "Year" means twelve (12) consecutive months beginning with January and ending with December.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 2.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 2 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defines terms that are used in the regulations in 810 KAR Chapter 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 2.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's licensed race tracks and all individual licensed participants in horse racing are potentially affected by this administrative regulation's establishment of definitions pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed racing associations and individual participants in horse racing will be required to adhere to the requirements and rules set forth in the regulations in Title 810 KAR pertaining to horse racing. This administrative regulation defines terms that appear in 810 KAR Chapter 2.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied



because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.260.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 2:010. Racing Commission and administrative staff.**

RELATES TO: KRS 230.230, 230.240

STATUTORY AUTHORITY: KRS 230.240(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.240(1) authorizes the executive director of the commission to employ staff deemed by the executive director to be essential at or in connection with any horse race meeting and in the best interest of racing. The function of this administrative regulation is to outline the positions and duties of certain commission staff members.

Section 1. Stewards and Judges. The commission shall employ:

(1) A chief state steward and presiding judge, responsible for overall supervision of all commission matters pertaining to horse racing; and

(2) A state steward and state judge, responsible for all commission matters at horse racing meetings to which he or she is assigned and for other duties as may be directed.

Section 2. Commission Licensing Administrator.

(1) The commission shall employ a person who shall be responsible for:

(a) Processing license applications of all persons required to be licensed by 810 KAR 3:020; and

(b) Collecting licensing fees.

(2) The licensing administrator or his or her assistants shall:

(a) Be present on association grounds prior to the opening of a race meeting to accept license applications;

(b) Maintain an office on association grounds to accept license applications during the race meeting;

(c) File daily reports to the commission to include:

1. A list of license applications; and

2. An accounting of fees received;

(d) Forward all fees to the commission; and

(e) Be responsible for photographing license applicants for whom same is required.

Section 3. Commission Director of Pari-mutuel Wagering.

(1) The commission shall employ or designate a supervisor who shall be responsible for:

(a) Verifying daily handle for live wagering, simulcast wagering, advance deposit wagering, and historical horse racing wagering;

(b) Reviewing advance deposit wagering and totalizator license applications;

(c) Overseeing wagering investigations;

(d) Testing totalizator services before each race meeting, and ensuring that totalizator standards are met;

(e) Reviewing requests for new pari-mutuel wagers;

(f) Submitting reports to the Department of Revenue summarizing wagering activities;

(g) Reviewing tax statements and totalizator reports for accuracy;

(h) Implementing pari-mutuel wagering policies and procedures; and

(i) Performing other duties related to pari-mutuel wagering as the commission or the executive director may assign.

(2) The commission director of pari-mutuel wagering or his or her representative shall have access to all association books, records, and pari-mutuel equipment.

Section 4. Commission Veterinarian. The commission shall employ a veterinarian licensed in Kentucky and experienced in equine medicine and practice.

(1) The commission veterinarian shall:

(a) Advise the commission on matters related to equine health and the practice of veterinary medicine;

(b) Supervise and control the detention area;

(c) Direct and supervise the collection of samples for the testing of horses for prohibited medication;

(d) Inspect and record findings concerning racing soundness for all horses entered;

(e) Maintain and post on the commission website the veterinarian's list of horses that are ineligible to race because of sickness or unsoundness;

(f) Report any observed cruel or inhumane treatment of horses to the stewards;

(h) Be attendant on the stewards and the racing secretary at scratch time each day;

(i) Examine horses as racing officials may request;

(j) Make prompt reports to racing officials;

(k) Be present in the paddock for saddling;

(l) Inspect the horses for:

1. Physical fitness;

2. General conditions; and

3. Any unsoundness;

(m) Accompany each field to the starting gate;

(n) Observe all horses after the finish of each field.

(2) The commission veterinarian shall have the authority to determine that:

(a) A horse has suffered an injury:

1. While in the paddock;

2. During the post parade; or

3. At the starting gate; and

(b) A horse is unfit to race. Upon such a determination, the commission veterinarian shall recommend to the stewards that the horse be excused and placed on the veterinarian's list.

(3) Upon the request of the stewards or judges, a horse requested to be scratched for physical reasons after scratch time shall be inspected by a commission veterinarian, who shall report

the condition of the horse to the stewards or judges.

(4) Except as provided in 810 KAR 8:010, Section 6, the commission veterinarian shall not:

(a) Treat, prescribe, or sell any drug supplies for any horse registered to race at any race track where he or she is employed, except in case of emergency;

(b) Buy or sell, for himself or another, any horse under his or her supervision;

(c) Be employed by or receive any compensation whether directly or indirectly from any licensed owner or trainer;

(d) Wager on a race under his or her supervision;

(e) Sell insurance; or

(f) Be licensed to participate in racing in any other capacity.

Section 5. Commission Director of Enforcement. The commission shall employ an investigator experienced in police work who shall:

(1) Maintain a current file on persons against whom rulings have been issued in racing jurisdictions and reported through the Association of Racing Commissioners International and the breed registry organization applicable to the horse. The file shall as necessary contain reports:

(a) Received from law enforcement agencies as to investigations, arrest records, and related information; and

(b) As to ejections or exclusions from association grounds in Kentucky and other racing jurisdictions;

(2) Investigate and ascertain the truth of statements made on license applications;

(3) Investigate possible infractions of racing rules at the request of the commission or stewards;

(4) Participate and cooperate with members of the track security, and state and local police on all other investigations and conduct pertaining to racing in the Commonwealth;

(5) Investigate and perform background checks on any person on association grounds or any license applicant whose conduct or reputation reflects on the honesty and integrity of thoroughbred racing or interferes with the orderly conduct of thoroughbred racing; and

(6) Perform such other duties related to security and enforcement as the commission or the executive director may direct.

Section 6. Director of Incentives and Development. The commission shall employ a director of incentives and development who shall:

(1) Oversee the operation of statutory breeders' incentive and development funds; and

(2) Perform such other duties as the commission or the executive director may direct.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the duties of members of the Commission staff.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth general guidelines concerning the duties and areas of responsibility of key members of the Commission staff.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.240(1) directs the Commission to prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform their duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the composition and duties of certain commission staff members as required by KRS 230.240(1).

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission is affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities are not directly affected by the administrative regulation, which defines areas of responsibility for Commission staff.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The Kentucky Horse Racing Commission will benefit from having the duties of key employees clearly defined.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No specific funding will be required to implement this regulation, other than the costs of paying the salaries of the Commission personnel.

(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 new fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this amended regulation will apply to Commission employees only.

**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 Kentucky Horse Racing Commission 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 230.230, 230.240.

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? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? No cost will be required to administer this regulation for the first year.

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

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 2:020. Thoroughbred and flat racing officials.**

RELATES TO: KRS 230.215, 230.240, 230.260

STATUTORY AUTHORITY: KRS 230.215(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. This administrative regulation outlines the qualifications, duties, powers and responsibilities of racing officials.

**Section 1. Racing Officials.**

(1) Racing officials at a thoroughbred or other flat race meeting shall include the following: steward, racing secretary, assistant racing secretary, clerk of scales, paddock judge, starter, placing judge, timer, identifier, veterinarian, assistant starter, jockey room custodian, jockey room employee, valet, and outrider.

(2) Persons appointed by the association to serve as racing officials during a race meeting shall first be approved by the commission, shall serve only so long as approved by the commission, and shall be under the supervision of the stewards.

(3) While serving as a racing official, a person shall not:

(a) Indirectly or directly, own a beneficial interest in:

1. A horse of the breed in which the person is engaged as a racing official; or

2. An association under his or her supervision;

(b) Cause to be bought or sold, for himself or another, any horse under his or her supervision;

(c) Buy or sell, for himself or another, any right to or in a contract with a jockey or apprentice jockey under his or her supervision;

(d) Wager on any race under his or her supervision;

(e) Write or solicit horse insurance; or

(f) Have any monetary interest in any business which seeks the patronage of horsemen or racing associations.

(3) Any racing official serving in the capacity of steward, placing judge, clerk of scales, starter, or horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which he or she serves. The examination shall show corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.

(4) Any racing official who desires to leave his or her employment during the race meeting shall first obtain permission from the commission; if a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the commission. If the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

**Section 2. Racing Secretary.** The racing secretary shall be responsible for:

(1) The programming of races during the race meeting;

(2) Compiling and publishing condition books;

(3) Assigning weights for handicap races;

(4) Receiving all entries, subscriptions, declarations, and scratches;

(5) Safekeeping of registration certificates and racing permits for horses, recording information required on the certificates and permits, and returning the certificates and permits to owners at the conclusion of the race meeting;

(6) Maintaining a record of all stakes fees received, arrears, jockeys' fees, purchase money in claiming races, and all other monies received incident to the race meeting, and making available payment to those persons entitled thereto within fourteen (14) days after the conclusion of the race meeting;

(7) Supervision of the horsemen's bookkeeper's handling of the "horseman's account";

(8) Daily posting of entries for the benefit of the public as soon as possible after entries have been closed and declarations have been made;

(9) Assigning stall applicants stabling as he or she may deem proper after consultation with the stewards, and maintaining a record of arrival and departure of all horses stabled on association grounds; and

(10) Publishing the official daily program, and ensuring that it contains accurate information of the following:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions, and distance for each race, and current track record for the distance;

(c) The full name of licensed owners of each horse, indicated as leased if applicable, and description of racing colors to be carried;

(d) The full name of the trainer and the jockey named for each horse together with the weight to be carried;

(e) Notices that:

1. All jockeys will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that are not included in required weighing out procedures; and

2. Upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions;

(f) The saddle cloth number or designation for each horse, and the post position for each horse, if there is a variance with the saddle cloth designation;

(g) Identification of each horse by name, color, sex, age, sire and dam; and

(h) Other information as may be requested from time to time by the association or the commission including changes of equipment, use of permitted race day medications, and wagering types available.

Section 3. Clerk of Scales. The clerk of scales shall be responsible for:

(1) The security, regulation, and control of the jockeys' room, its equipment, and the determination of which personnel are permitted access;

(2) Weighing out every jockey no later than fifteen (15) minutes prior to the race in which the jockey is scheduled to ride and recording all overweights, which shall immediately be posted and announced to the public before each race;

(3) Weighing in every jockey immediately after the finish of each race in which a jockey rode and promptly notifying the stewards whether any jockey weighed in underweight;

(4) Safekeeping of all racing colors;

(5) Reporting all color changes or jockey changes from that listed in the official daily program and causing the changes to be posted and announced to the public before each race;

(6) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;

(7) Ensuring accuracy of the scales and periodic tests of them;

(8) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any; and

(9) Immediately transmitting all complaints, protests, objections, or disputes submitted to the clerk of scales to the stewards, and if the stewards are unavailable, to the commission.

Section 4. Paddock Judge. The paddock judge shall have general supervision of the paddock and shall be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

(2) Maintaining a written record of all equipment for each horse saddled, inspecting all the equipment, and reporting any changes in the equipment to the stewards;

(3) Inspecting the bandages of each horse. The paddock judge may order the bandages removed or replaced;

(4) Paddock schooling of all horses approved for schooling by the stewards; and

(5) Ensuring that the saddling of all horses is orderly, open to public view and free from interference, and ensuring that horses are mounted at the same time and leave the paddock for the post in proper sequence.

Section 5. Starter.

(1) The starter shall be responsible for the fair and equal start of all horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his signal.

(2) So far as practical, the starter shall cause all horses to be loaded in order of post position, except the starter may in his discretion load an unruly or fractious horse out of order or may start the unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. With permission of the stewards, a race may be started without a starting gate. The starter may employ as many assistant starters as needed and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race comes upon the track.

(3) A horse shall not be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list that shall be posted in the racing secretary's office listing the names of all horses ineligible to start due to inadequate training at leaving the gate. Horses shall be schooled under the supervision of the starter or his assistants.

(4) The starter shall:

(a) Have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away;

(b) Report to the stewards any disobedience of his orders or

attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(5) An assistant starter shall not handle a horse until instructed to do so by the starter.

(6) A starter or assistant starter shall not:

(a) Accept any gratuity or payment other than his regular salary, directly or indirectly, for services in starting a race;

(b) Wager on a race; or

(c) Strike or use abusive language to a jockey.

(6) The starter shall maintain a written record showing the names of all starters during the day and the names of the assistant starters who handled each horse. This record shall be made available to the stewards upon request.

Section 6. Placing Judges.

(1) Three (3) placing judges shall occupy a stand directly above the finish line during the running of each race. The placing judges shall:

(a) Take special note of racing colors and distinguishing equipment carried by each horse;

(b) Determine the order of the horses as they cross the finish line by consideration of the respective noses of the horses; and

(c) Cause the numbers of the first four (4) horses to cross the finish line to be posted on the result board. The numbers of additional horses shall be posted in their correct order of finish if necessitated by an exotic wager.

(2) A photo finish camera approved by the commission shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line. Placing judges may request a photo to assist in determining margins of less than a half-length.

Section 7. Timer.

(1) The timer shall occupy a stand directly above the finish line during the running of each race to record the official time.

(2) The timer shall:

(a) Record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line; and

(b) Maintain a written record of fractional and final times of each race and have them available for inspection by the stewards or commission on request.

(3) The timer may use an electrical or mechanical timing device approved by the commission as an aid in determining the official time of each race.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the category of "racing officials" at horse races in the Commonwealth, and sets forth the responsibilities of the more important of these officials.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to precisely define who racing officials are, and to set forth their responsibilities in presiding over and assisting with horse races in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. This administrative regulation sets forth the qualifications, duties, and authority of racing officials who assist in the conduct of horse races in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by ensuring that race officials perform certain duties to promote the efficiency and integrity of horse races in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: The Commission is affected by this administrative regulation, and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed racing officials will be required to perform the duties outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Racing associations are required to employ the racing officials whose duties are set forth in this administrative regulation. No other significant costs are associated with performing the prescribed duties.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering is not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

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 Kentucky Horse Racing Commission 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 230.230, 230.240, 230.260.

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? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? No cost will be required to administer this regulation for the first year.

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 2:030. Chemical dependency.**

RELATES TO: KRS 230.215, 230.260(1), 230.290(2), (3), 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(1), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.260(1) vests the racing commission with jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds and may eject or exclude therefrom or any part thereof, any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the racing commission, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing or racing at horse race meetings. KRS 230.320(1) authorizes the commission to promulgate administrative regulations under which a license may be denied, suspended, or revoked. This administrative regulation prohibits licensees of the commission from abusing alcohol or engaging in illegal drug use or activity while performing their duties, provides for drug and alcohol testing,

and establishes consequences for violations of this administrative regulation.

#### Section 1. Definitions.

(1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Crimes involving drugs and drug paraphernalia" means all activities involving drugs and drug paraphernalia which are illegal under KRS Chapter 218A or other statutes or administrative regulations of this Commonwealth, and similar laws and regulations of other states and the United States, and which include the use of, possession of, or trafficking in marijuana, cocaine, or any other controlled substances; possession or distribution of drug paraphernalia, or obtaining or using prescription drugs without a valid prescription.

(3) "Documentation" means proof of regular attendance at meetings, counseling sessions, clean drug test results (if suspended for a drug violation), and certification from the treatment program indicating full compliance with treatment and completion of the program.

(4) "Drug paraphernalia" is defined by KRS 218A.500(1).

(5) "Under the influence of intoxicants" means a person's mental or physical abilities are impaired by the presence of alcohol or other drugs in his body to the degree that the person is not able to safely and properly perform his job functions.

#### Section 2. Prohibited Activities. A licensee shall not:

(1) Be under the influence of intoxicants while:

(a) Engaged in the activities for which the license is held; or

(b) On association grounds;

(2) Commit any crime involving drugs or drug paraphernalia;

(3) Fail to comply with substance abuse treatment required pursuant to an evaluation conducted under this administrative regulation;

(4) Tamper with a drug or alcohol test; or

(5) Refuse to submit to drug or alcohol testing upon request of the commission, a steward, a judge, or any other authorized employee of the commission.

Section 3. Evidence of Violation. The following shall be presumptive evidence of a violation of this administrative regulation:

(1) While engaged in the activities for which the license is held, or while on association grounds:

(a) A breath, urine, or blood test result revealing an alcohol concentration of 0.05 percent or more;

(b) A positive result from a drug test for marijuana, cocaine, or other controlled substance for which the licensee does not have a current and valid prescription;

(c) A positive result for a prescribed medication for which the individual has a valid prescription, but the prescription for which indicates that taking the medication may impair vision, impair the ability to perform normal daily functions, or cause drowsiness, or the prescription for which advises using care when operating a car or machinery;

(d) A positive result indicating more than one (1) prescribed medication for which the individual has valid prescriptions, but the prescription directions for which advise against taking more than one (1) prescribed medication at a time; or

(e) A positive result that exceeds the allowable limit prescribed on the medication label; or

(2) While participating in a race as a racing official, or while mounted on a horse or stable pony or mounted in a sulky on association grounds, a breath, urine, or blood test result revealing an alcohol concentration greater than 0.00; or

(3) A conviction in any court of law for a drug-related offense.

#### Section 4. Discipline.

(1) First offense.

(a) For a first time violation of this administrative regulation, the offender's license may be suspended for up to thirty (30) days.

(b) The offender may be required to undergo an evaluation by a professional in the field of addictive or substance abuse

disorders approved by the commission.

(c) If the evaluator determines the existence of a substance abuse problem, the offender shall be required to comply with the recommended course of treatment.

(d) For a first time violation of this administrative regulation for an alcohol infraction or crime involving drugs and drug paraphernalia, the stewards or judges shall have the discretion to impose a lesser penalty and may excuse the offense for counting purposes under this administrative regulation.

(2) Second offense.

(a) For a second violation of this administrative regulation within a three (3) year period, the offender's license may be suspended for up to sixty (60) days.

(b) The offender shall be required to enroll in and complete a substance abuse program approved by the commission.

(3) Third offense. A third violation of this administrative regulation within a three (3) year period may result in the revocation of the offender's license.

(4) Zero tolerance offense. Conviction in any court of law of a drug trafficking offense shall result in revocation of the offender's license even if it is a first offense under this administrative regulation.

(5) In determining the three (3) year period under this administrative regulation, the period shall be measured from the date on which the violation occurred. If the violation is a failure to complete recommended treatment, the violation date shall be calculated from the date of the first missed meeting, or session. For the purposes of subsections (2) and (3) of this section, violations occurring after the three (3) year period shall not be considered.

#### Section 5. Basis for Testing.

(1) In deciding whether drug tests should be administered, stewards or judges may require:

(a) All licensees to be tested on a particular day;

(b) Licensees on a particular day to be tested totally at random; or

(c) Those licensees that the stewards or judges has a reasonable suspicion may be under the influence of intoxicants to submit to drug and alcohol testing.

(2) In determining whether there is reasonable suspicion to require testing, the stewards or judges may consider any of the following factors:

(a) Unexplained or continued violations of KRS Chapter 230 or KAR Title 810 which have a detrimental effect on racing;

(b) Involvement in any accident that causes injury to a person or animal at the track or any near accident that creates a clear danger of accident or injury to a person or animal at the track;

(c) Willful conduct detrimental to horse racing as evidenced by continued violations of KRS Chapter 230 or KAR Title 810, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track;

(d) Observable physical or emotional impairment at the track;

(e) Involvement in a race of questionable outcome or circumstance as determined by the stewards or judges;

(f) Willful abuse of an animal or person who is engaged in a race, work, or exercise at the track;

(g) Prior positive drug or alcohol test or tests in this or other jurisdictions, excluding those for which a valid legal prescription is provided;

(h) Performance of prescribed duties in a manner that indicates a best effort to win is not present at the track;

(i) Information supplied by:

1. A law enforcement agency;

2. The United States Trotting Association;

3. The Kentucky Horsemen's Association;

4. The Association of Racing Commissioners International; or

5. The racing commission of any state or country;

(j) Any other conduct at the track that can be documented and provides reasonable grounds to suspect:

1. Dependence on, possession of, or usage of a controlled substance; or

2. An alcohol violation;



(k) Refusal to provide a urine or blood sample if requested to do so in accordance KAR Title 810; or

(l) Recent arrest or pending criminal charges regarding the sale, possession, manufacture, cultivation, or use of illegal drugs.

Section 6. Payment of Expenses Related to this Administrative Regulation. A licensee shall be responsible for all or part of the expenses associated with violating this administrative regulation, including the cost of treatment and reinstatement of the license. The responsibility for payment of expenses shall be as follows:

(1) For a drug or alcohol test initiated by the commission to determine if a violation has occurred, the commission shall bear the cost unless the test reveals a violation. If the test reveals a violation:

(a) For a first offense, the offender's responsibility for costs shall be based upon consideration of the factors set forth in Section 5(4)(a) through (l) of this administrative regulation, and determined by the stewards, judges, or other authorized commission employee; and

(b) For a second or later offense, the offender shall bear all costs.

(2) Failure to pay any costs imposed shall be grounds for denial of reinstatement.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prohibits licensees of the Commission from abusing alcohol or engaging in illegal drug use or activity while performing their duties, provides for drug and alcohol testing, and establishes consequences for violations of this administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent alcohol and drug abuse at locations under the jurisdiction of the Commission, to provide for the safety racing participants and spectators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation establishes prohibitions concerning alcohol and drug abuse at locations under the jurisdiction of the Commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in ensuring that racing activities are conducted in a safe manner free of the hazards of drug and alcohol abuse.

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: The Commission is affected by this administrative regulation, and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed participants in horse racing will be required to refrain from alcohol and drug abuse and be subject to testing at locations under the jurisdiction of the Commission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed upon licensees, except to the extent that a licensee may be required to enroll in and complete a substance abuse program or pay for all or a portion of testing expense upon a positive test.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Licensed participants in horse racing will benefit from racing activities that are conducted in a safe manner free of the hazards of drug and alcohol abuse.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will apply to all licensees in an equal manner.

## 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 Kentucky Horse Racing Commission 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 230.215, 230.260.

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 revenue will be generated by this administrative regulation for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): None.

Expenditures (+/-): Slight increases in expenditures may result in those instances in which the commission assumes the cost of drug or alcohol tests which are negative.

Other Explanation: The Commission does not derive revenue from this regulation; the penalties are suspensions and not fines.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 2:040. Stewards.**

RELATES TO: KRS 230.215(2)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(1), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.240(1) authorizes the commission to prescribe by administrative regulation the required officials for horse racing and their official duties. KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. This administrative regulation establishes the qualifications, duties, powers, and responsibilities of the stewards.

Section 1. Steward Qualifications. To qualify for employment or approval by the commission to serve as a steward, a person shall have:

(1)(a) Successfully completed an accreditation school or program approved by the commission; and

(b) Satisfactorily passed a written and oral examination given by the school or program;

(2) Served as a steward, racing secretary, assistant racing secretary, starter, placing judge, horse identifier, paddock judge, or clerk of scales, at one (1) or more recognized race meetings for a period of not less than sixty (60) racing days per year during at least three (3) of the five (5) preceding calendar years;

(3) Been an observer in the stewards stand for a period of at least thirty (30) days; and

(4) Satisfactorily passed an optical examination within one (1) year prior to approval as a steward evidencing corrected twenty-two (20-20) vision and ability to distinguish colors correctly.

Section 2. Steward Prohibitions. (1) No person shall serve as a steward until approved by the commission.

(2) No person under suspension or ejection by any racing jurisdiction shall be employed or approved by the commission to serve as a steward.

(3) No person may serve as a steward unless the commission

is satisfied that income, other than salary as a steward, that may accrue to a person under consideration for appointment as a steward is independent of and unrelated to patronage of or employment by any licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of a licensee.

Section 3. Employment of Stewards. (1) The commission shall employ and compensate two (2) of the three (3) stewards for each race meeting, including the chief steward.

(2) A racing association shall nominate one (1) of the three (3) stewards for each race meeting for approval by the commission and shall be responsible for that person's compensation as a steward.

(a) The association nomination for steward shall be submitted when an association applies for a license if possible, but in no event later than thirty (30) days before commencement of a race meeting, and shall be accompanied by biographical data describing the experience and qualifications of the nominee.

(b) The association shall submit successive nominees until one (1) person is approved by the commission as qualified to serve as a steward.

(3) Stewards shall serve from one (1) minute after midnight on the day before the first racing day until one (1) minute before midnight on the day after the last racing day of the race meeting for which they are employed. If a dispute or controversy arises during a race meeting that is not settled at the conclusion of the race meeting, then the matter shall be adjudicated by the stewards at a successive race meeting in Kentucky, or until the matter is referred or appealed to the commission.

(4) Stewards shall be responsible only to the commission and may be replaced by the commission at any time for failure to perform their duties to the satisfaction of the commission.

(5) If a steward becomes ill, resigns, or is unable to serve for any reason, the remaining stewards shall nominate a successor or temporary steward to the commission for approval. In emergencies, a single member of the commission by telephone may approve employment of a successor steward.

Section 4. General Powers of Stewards. The stewards shall exercise immediate supervision, control, and regulation of racing at each licensed race meeting on behalf of and responsible only to the commission. The powers of the stewards shall include:

(1) Authority over all horses and all persons, licensed or unlicensed, on association grounds and at locations under the jurisdiction of the commission during a race meeting as to all matters relating to racing;

(2) Determining all questions, disputes, protests, complaints, or objections concerning racing which arise during a race meeting and enforcing the determinations;

(3) Suspending the license of a participant in racing or denying licensed or unlicensed persons access to association grounds or locations under the jurisdiction of the commission, upon reasonable belief that a violation of KAR Title 810 has or is about to occur;

(4) Interpreting and enforcing Chapter 230 of the Kentucky Revised Statutes and Title 810 of the Kentucky Administrative Register and determining all questions pertaining to a racing matter not specifically covered by these administrative regulations;

(5) Issuing decisions or rulings pertaining to racing which shall supersede orders of the officers, directors, and officials of the association and which shall, if the stewards deem proper, vary any arrangement for the conduct of a race meeting, to include postponing or canceling a race, or ruling a race run as "no contest";

(6) Requesting assistance from commission employees, racing officials, members of the Thoroughbred Racing Protective Bureau, track security police, or state or local police, in the investigation of possible rule infractions;

(7) Conducting hearings on all questions, disputes, protests, complaints, or objections concerning racing matters;

(8) Selecting a substitute, if a regularly named rider or racing official other than a steward is unable for any reason to perform. Upon suspicion of fraud or misconduct, the stewards may excuse a horse or replace any rider or racing official other than a steward;

and

(9) All other powers and duties established for stewards in Title 810 KAR.

Section 5. Duties and Responsibilities of Stewards. In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of race meetings, and without limiting the authority of the stewards to perform these and other duties enumerated in these administrative regulations, the stewards shall have the following specific duties and responsibilities:

(1) To take appropriate action on all misconduct or administrative regulation infractions, to cause investigations to be made of all instances of possible infractions, and to take appropriate action to prevent an administrative regulation infraction;

(2) To have at least one (1) steward on association grounds from scratch time or if not a racing day, when entries are first taken until entries are closed. At least two (2) stewards shall be present for the scheduled viewing of race replays. All three (3) stewards shall be on association grounds no less than ninety (90) minutes before post time until conclusion of the last race. All three (3) stewards shall be present in the stewards' stand during the running of each race;

(3) To have at least one (1) steward, or a designated representative of the stewards, present in the paddock at least twenty (20) minutes before each race. The steward may remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and inspect, with the paddock judge and commission veterinarian, all horses for fitness;

(4) To inspect applications for licenses to participate in racing, and administer, or cause to be administered by technically qualified persons, standard examinations to all first-time applicants for a trainer, jockey, apprentice jockey, veterinarian, dental technician, or farrier license, and make recommendations to the commission as to the qualifications of all applicants for licenses to participate in racing;

(5)(a) To review licenses and registration certificates, and contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, jockey and apprentice jockey contracts, appointments of agents, and adoptions of racing colors or stable name; and

(b) To determine the eligibility and appropriateness for participation in racing under supervision of the stewards;

(6) To call for proof of eligibility of a horse or person to participate in a race, if eligibility is in question and in absence of sufficient proof to establish eligibility, the stewards may rule that horse or person ineligible;

(7) To review stall applications and advise the association of undesirable persons, if any, among owners and trainers applying for stalls and provide the association with information pertaining to the undesirable persons;

(8) To supervise the taking of entries and receive all declarations and scratches and determine all questions arising and pertaining to declarations and scratches. The stewards may in their discretion refuse the entry of any horse by any person, refuse to permit a declaration or scratch, or may limit entries;

(9) To lock all pari-mutuel betting machines not later than the moment the starting gate is opened for the commencement of a race, to cause the "inquiry" sign to be posted immediately after the horses have crossed the finish line in a race if any doubt is held by any steward or any other racing official as to the fairness of the running of that race, to cause the objection sign to be posted upon the lodging of an objection, and to cause the "official" sign to be posted after determining the official order of finish for purposes of pari-mutuel payoff;

(10) To draw up a list of riders including all apprentice jockeys whom the stewards feel should review the race replays for instructional purposes and post that list in the jockey's room;

(11) To maintain a daily Stewards Report recording all actions taken by the stewards on all controversies that arise during the day. The report shall show name of track, date, weather, track

condition, claims, rulings issued, and any other circumstance or condition regarded as unusual. The reports shall be signed by all three (3) stewards and filed with the commission;

(12) To make periodic inspections of the barn area and check track security and to make occasional, informal visits to the jockeys' room and observe weighing out and check security. Inspections and observations made pursuant to this section shall be noted in the stewards' report;

(13) To maintain a written record of all questions, disputes, protests, complaints, or objections brought to the attention of the stewards, and which, at the discretion of the stewards, warrant investigation and the creation of a written record. The record shall be available to the commission for inspection at all times; and

(14) If deemed necessary, after the conclusion of a race meeting, to submit to the commission a written report setting out the condition of the meeting and association grounds, and any recommendations for improvement.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the duties, responsibilities, and powers of the stewards, who preside over race meetings under the jurisdiction of the Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the stewards to effectively govern race meetings under the jurisdiction of the Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation grants authority to stewards to ensure that race meetings are conducted in a fair and efficient manner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by granting the stewards the authority to preside over race meetings under the jurisdiction of the Commission.

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

(a) How the amendment will change this existing administrative

regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: The Commission is affected by this administrative regulation, and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: No particular action will be required of licensed participants in horse racing to comply with this administrative regulation, except to the extent participants are subject to the authority, direction, and rulings of the stewards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No direct costs will be imposed upon licensed participants in horse racing in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will benefit from the order provided to race meetings under the direction of the stewards.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative 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: No funding will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees or increase any current fees to participate in licensed horse racing with pari-mutuel wagering thereon in Kentucky.

(9) TIERING: Is tiering applied? Tiering is not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 2:050. Judges and Standardbred Racing Officials.

RELATES TO: KRS 230.215(2), 230.240(1), 230.260(1), 230.290, 230.310

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(1), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.240(1) authorizes the commission to prescribe by administrative regulation the required officials for horse racing and their official duties. KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. This administrative regulation sets forth the required officials and describes their functions and duties.

#### Section 1. Racing Officials.

(1) Officials at a race meeting shall include the following:

- (a) Presiding judge;
- (b) Two (2) associate judges;
- (c) Racing secretary;
- (d) Paddock judge;
- (e) Horse identifier;
- (f) Clerk of the course;
- (g) Official starter;
- (h) Official charter;
- (i) Official timer;
- (j) Photo finish technician;
- (k) Patrol judge;
- (l) Program director;
- (m) Official commission veterinarian; and
- (n) Any other person designated by the commission who is necessary to effectively conduct the race meeting.

(2) At a matinee or county fair, there shall be at least one (1) judge approved by the commission in the judges' stand. At any meeting at which races are charted, the association shall provide both a licensed charter and a licensed clerk of the course.

#### Section 2. Employment of Judges.

(1) The commission shall employ and compensate two (2) of the three (3) judges for each race meeting, including the presiding judge.

(2) A racing association shall nominate one (1) of the three (3) judges for each race meeting for approval by the commission and shall be responsible for that person's compensation as a judge.

(a) The name of the association nominee shall be submitted

when an association applies for a license if possible, but in no event later than thirty (30) days before commencement of a race meeting, and shall be accompanied by biographical data describing the experience and qualifications of the nominee.

(b) The association shall submit successive nominees until one (1) person is approved by the commission as qualified to serve as a judge.

Section 3. Judge Qualifications. To qualify for employment or approval by the commission as a judge, a person shall have:

(a) Attended an accreditation school or program approved by the commission;

(b) Satisfactorily passed a written and oral examination given by the school or program; and

(c) Possess the requisite knowledge of the duties expected of the position and the rules of harness racing.

Section 4. Judge Prohibitions.

(1) No person shall serve as a judge:

(a) Until approved by the commission; or

(b) While under suspension or ejection by the United States Trotting Association, Standardbred Canada, or any racing jurisdiction.

Section 5. An association shall submit to the commission, at least thirty (30) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

Section 6. Officials at Extended Meetings.

(1) The officials listed in Section 1(1) of this administrative regulation shall not serve at an extended pari-mutuel meeting without a valid commission license.

(2) A person shall not be employed for more than one (1) official race position at a meeting unless specifically approved by the commission.

(3) The commission shall employ or approve all officials listed in Section 1(1) of this administrative regulation prior to each harness racing meeting, based on standard qualifications for racing officials.

(4) A refusal to grant a license to a person may be reviewed by the commission in accordance with 810 KAR 3:050.

Section 7. Prohibited Practices. A racing official, his or her assistants, or any other employee in the racing secretary's office shall not engage in the following activities while serving in an official capacity at a race meeting:

(1) Have an ownership interest in any horse that is racing at the meeting;

(2) Participate in the sale or purchase of any horse that is racing at the meeting;

(3) Sell or solicit horse insurance on any horse racing at the meeting;

(4) Be licensed in any other capacity without permission of the commission;

(5) Directly or indirectly wager on the outcome of any live race which the person is officiating; or

(6) Refuse to submit to a breath, blood, or urine test if directed to do so by the commission or its designee.

Section 8. Location of Judge's Stand.

(1) The judge's stand shall be located and constructed so as to afford an unobstructed view of the entire track.

(2) Anything that might obscure or otherwise impede an official's vision of any portion of a track during a race shall not be permitted on the track.

Section 9. Judge's Stand Occupants. From fifteen (15) minutes before the first race until ten (10) minutes after the last race, the occupants of the judge's stand shall be limited to:

(1) Judges;

(2) Clerk of the course;

(3) Secretary;

(4) Starter;

(5) Timers;

(6) Official announcer;

(7) Runner who posts the photo finish;

(8) Officials of the commission; and

(9) Other persons specifically authorized by the presiding judge.

Section 10. Appointment of Substitute Officials. If a vacancy exists among the association racing officials, the association shall fill the vacancy immediately with a temporary appointment. The appointment shall be effective until the vacancy is filled in accordance with this administrative regulation. A temporary or emergency appointment shall be approved by the executive director of the commission or the presiding judge.

Section 11. Appointment of Substitute Judge. If a judge is absent at race time, the presiding judge shall appoint a substitute. If a substitute is appointed, the commission shall be notified immediately by the presiding judge.

Section 12. Presiding Judge. The presiding judge shall:

(1) Supervise the following persons:

(a) Associate judges;

(b) Patrol judges;

(c) Starters;

(d) Paddock judges;

(e) Photo finish judge;

(f) Clerk of the course;

(g) Timers;

(h) Charters;

(i) Racing secretary;

(j) Official announcer; and

(k) Other licensed personnel directly responsible for conducting the racing program;

(2) Promptly notify owners, trainers, drivers and grooms of penalties imposed;

(3) Promptly submit a detailed written report to the commission of violations of the rules by an association, its officers, or race officials;

(4) Make other reports required by the commission;

(5) Sign each sheet of the judge's book, verifying the correctness of all information, and forward the sheets to the United States Trotting Association no later than the day following the contesting of the race; and

(6) Be responsible for the maintenance of the records of the meeting and for forwarding them to the commission.

Section 13. Authority and Procedure of Judges. A presiding judge shall:

(1) Levy fines and penalties, as provided by KRS Chapter 230 and 810 KAR Chapter 5 and 810 KAR Chapter 8;

(2) Determine questions of fact relating to the race;

(3) Decide any differences between parties to the race, or any contingent matter which arises, that are not otherwise provided for in this administrative regulation;

(4) Declare pools and bets "off" in cases of fraud;

(a) A decision regarding pools and bets shall be made by the presiding judge at the conclusion of the race, and prior to the result of the race being announced as official, based upon the:

1. Observation of the presiding judge; and

2. Facts determined upon immediate investigation.

(b) After the official placing at the conclusion of the heat or dash, a reversal or change of decision shall not affect the distribution of betting pools made on the official placing.

(c) If pools and bets are declared "off" for fraud, the party who commits the fraud shall be charged pursuant to Section 27(2) of this administrative regulation;

(5) Control the horses, drivers, and assistants by citing any drivers or assistants who fail to obey their orders or 810 KAR Chapter 5 or 810 KAR Chapter 8;

(6) Examine under oath any party connected with a race regarding a wrong or complaint;

(7) Compel by written notice the appearance of a person

whose testimony is necessary to the proper conduct of a hearing;

(8) Consider complaints of foul only from the patrol judges, owners, trainers, or drivers in the race;

(9) Make decisions in the public interest and in the best interest of racing that are required by extraordinary circumstances not covered by Title 810 KAR; and

(10) Declare a dash or heat "no contest" if the track is thrown into darkness during the progress of a race because of a failure of electricity or any other unforeseen incident.

#### Section 14. Judges' Duties.

(1) (a) A presiding judge shall exclude from the race a horse that in the judge's opinion is improperly equipped, dangerous, or unfit to race, including a horse that is sick, weak, or extremely lame.

(b) A horse shall not race:

1. With a tube in its throat, or with the assistance of any other medical device, unless the approval of the presiding judge and the commission veterinarian are obtained prior to the race;

2. If it does not have unimpaired vision in at least (1) eye; or

3. If it is infected with Equine Infectious Anemia or is a carrier of that disease.

(2) A presiding judge shall investigate any:

(a) Apparent or possible interference, or other violation of 810 KAR 5:070, Section 1, whether or not a complaint has been made by a driver; or

(b) Act of cruelty to a race horse that is seen by, or reported to, him by any person during a meeting at which he officiates. If a judge finds that an act of cruelty has been committed, he shall charge the offender pursuant to Section 25(1) of this administrative regulation;

(3) The executive director of the commission, or the designated representative of the commission:

(a) Shall have the same authority as that conferred upon judges by the provisions of this section;

(b) May impose a penalty for an act of cruelty or neglect of a horse committed by any person, whether the act was performed on or off the premises of a race track; and

(c) Shall report any suspected criminal act to the appropriate law enforcement authorities.

(4)(a) A presiding judge shall conduct an investigation of an accident to determine its cause on the day of a race or immediately thereafter; and

(b) At the time of an accident the:

1. Inquiry sign shall be posted; and

2. The race shall not be declared official until the presiding judge has conferred with the patrol judge, if one (1) is present, and the starter.

(5) A presiding judge shall exhaust all means to safeguard the contestants and the public.

#### Section 15. An association shall not:

(1) Rescind or modify a fine imposed by a presiding judge;

(2) Review an order of suspension or expulsion; or

(3) Interfere with any official in the performance of his or her duties.

#### Section 16. Judges' Procedure. (1) The judges shall:

(a) Be in the stand:

1. Fifteen (15) minutes before the first race;

2. For ten (10) minutes after the last race; and

3. Whenever the horses are upon the track;

(b) Observe the preliminary warming up of horses and scoring, noting:

1. Behavior of horses;

2. Lameness;

3. Equipment;

4. Conduct of the drivers;

5. Changes in odds at pari-mutuel meetings;

6. Unusual incidents pertaining to horses or drivers participating in races; and

7. Any apparent or possible interference or other violation of 810 KAR 1:070, Section 1; and

(c) Designate one (1) of the judges to lock the pari-mutuel machines immediately upon the horse reaching the official starting point.

(2) The presiding judge shall:

(a) Approve the post time for each race;

(b) Call the horses at a time sufficient to preclude excessive delay after the completion of two (2) scores; and

(c) Be in communication with the starter from the time the starter picks up the horses until the finish of the race.

(3) A patrol judge or starter who witnesses a violation of KRS Chapter 230 or 810 KAR Chapter 5 or 810 KAR Chapter 8 shall immediately report the violation to the presiding judge.

(4) At least one (1) judge shall observe the drivers throughout the stretch, and specifically note:

(a) Changing course;

(b) Any driving offenses or instances of interference with a race;

(c) Improper use of whips;

(d) Breaks; and

(e) Failure to contest the race to the finish.

(5) Photo sign.

(a) The photo sign shall be displayed if:

1. The order of finish among the contending horses is less than a half-length; or

2. A contending horse is on a break at the finish.

(b) After the finish:

1. The photo shall be examined;

2. A decision shall be made;

3. The photo shall be checked by the presiding judge for accuracy; and

4. The photo shall be posted for public inspection after the race has been declared official.

(6) The judges shall decide the order of finish if:

(a) The photo finish camera suffers electrical or mechanical failure; or

(b) A distorted, deceptive, or otherwise inadequate picture is developed.

(7)(a) The judges shall cause a horse to be examined by the commission veterinarian if it falls or runs loose and uncontrolled:

1. During warm up;

2. Prior to the race; or

3. Going to the post.

(b) If the commission veterinarian determines that the horse is unfit, the presiding judge shall order the horse scratched.

(c) If the trainer believes his or her horse is unfit to race, the trainer shall so advise the judge. The judge shall then determine if the horse is unfit to race.

#### Section 17. Patrol Judges.

(1) At the discretion of the judges, patrol judges may be appointed by the association.

(2) Appointment of patrol judges shall require the approval of the presiding judge.

(3) Patrol judges shall be supervised by the presiding judge.

(4) Patrol judges shall observe activity on the race track in their area during the race program.

(5) Patrol judges shall immediately report to the presiding judge any fouls or improper conduct, including:

(a) Action on the track which could improperly affect the result of a race;

(b) A violation of KRS Chapter 230, 810 KAR Chapter 5, or 810 KAR Chapter 8;

(c) A violation of the rules of decorum;

(d) The lameness or unfitness of a horse; or

(e) A lack of proper racing equipment.

(6) Patrol judges shall be in constant communication with the judges during the course of a race.

(7) Patrol judges shall attend hearings or inquiries on violations, if requested by the presiding judge, and testify under oath.

(8) If patrol judges have been appointed, results of a heat or dash shall not be announced until the reports of the patrol judges have been received.



Section 18. Starter.

- (1) Subject to the approval of the commission, the starter shall be:
- (a) Designated by the association; and
  - (b) Licensed as a starter by the commission.
- (2) The starter shall be in the starting gate fifteen (15) minutes before the first race.
- (3) The starter shall have control over the horses from the formation of the post parade until the word "go" is given.
- (4) A starter may recommend disciplinary action to a presiding or associate judge.
- (5) If requested by the judges, the starter may assist in placing the horses.
- (6) A starter shall be licensed by the United States Trotting Association as a prerequisite to approval by the commission to serve as a starter.

Section 19. Clerk Duties; Clerk of the Course. The clerk of the course shall:

- (1) Assist in drawing positions if requested by the judges;
- (2) Keep the judge's book and record, containing:
  - (a) All horses entered without electronic eligibility certificates;
  - (b) Names of owners, drivers, and license numbers of drivers;
  - (c) The charter lines at pari-mutuel meetings;
  - (d) Money won by a horse at that track during that race meeting;
  - (e) Drawn or ruled out horses;
  - (f) The performance time of horses in minutes, seconds, and fifths of seconds; and
  - (g) Information related to the finish of the race, including the position of a horse in the race if it was charted;
- (3) Verify the correctness of the judge's book, including race time, placing and money winnings, and reasons for disqualification, if any;
- (4) Verify that the book is properly signed; and
- (5) Upon request, assist judges in placing horses.

Section 20. Timers.

- (1) If an electronic or electric timing device is used, the device shall be approved by the commission.
- (2) Time shall be announced and recorded in fifths of seconds.
- (3)(a) If an electronic or electric timing device is used, there shall be one (1) timer in the judge's or timer's stand.
- (b) If an electronic or electric timing device is not used, there shall be three (3) timers in the judge's or timer's stand.
- (4)(a) The timers shall be in the stand fifteen (15) minutes before the first heat or dash is to be contested.
- (b) Timers shall start their watches when the first horse leaves the point from which the distance of the race is measured.
- (c) The time of the leading horse at the quarter, half, three-quarters, and the finish shall be taken.
- (d) If odd distances are raced, the fractions shall be noted accordingly.

Section 21. Paddock Judge.

- (1) Under the direction and supervision of the presiding judge, the paddock judge shall be in complete charge of paddock activities as specified in 810 KAR 2:080, Section 8.
- (2) The paddock judge shall be approved by the commission, pursuant to Section 6(3) of this administrative regulation.
- (3) The paddock judge shall:
  - (a) Ensure that the fields are on the track for the post parade in accordance with the schedule provided by the presiding judge;
  - (b) Check for changes in equipment, broken or faulty equipment, head numbers, or saddle pads;
  - (c) Supervise paddock gate personnel; and
  - (d) Check in and check out horses and drivers. Check in and check out shall include the identification of all horses coming into the paddock, by the freeze brand, tattoo number, or other uniform or standardized means of identification approved by the commission.
- (4) The paddock judge shall:
  - (a) Direct the activities of the paddock farrier;

- (b) Immediately notify the presiding judge of any circumstances that could change, delay, or otherwise affect the racing program;
- (c) Report to the presiding judge any incident of cruelty to a horse that he or she observes or is aware of;
- (d) Ensure that only properly authorized persons are permitted in the paddock;
- (e) Notify the presiding judge of a change of racing equipment or shoes before the race;
- (f) Inspect and supervise the maintenance of emergency equipment kept in the paddock; and
- (g) Notify judges of any trainers, drivers, or grooms who leave the paddock in an emergency.

Section 22. Identifier.

- (1) An association shall employ an identifier, licensed by the commission and the United States Trotting Association, at an extended pari-mutuel meeting.
- (2) The identifier shall:
  - (a) Check the identification of horses coming into the paddock, including the tattoo number, freeze brand or other commission-approved means of identification, color, and markings; and
  - (b) Be under the immediate supervision of the paddock judge, and the general supervision of the presiding judge.
- (3)(a) The identifier shall immediately report to the paddock judge a discrepancy that is detected in the tattoo number or freeze brand, or other commission-approved means of identification, or the color or markings of a horse; and
- (b) The paddock judge shall immediately notify the presiding judge of the discrepancy.

Section 23. Program Director.

- (1) Subject to the approval of the commission an association conducting an extended pari-mutuel meeting shall designate a program director, pursuant to Section 6(3) of this administrative regulation.
- (2) The program director shall be responsible for furnishing the public with complete and accurate past performance information as required by 810 KAR 5:010, Section 3.
- (3) A person shall not act as a program director at an extended pari-mutuel meeting unless that person has secured a license from the United States Trotting Association.

Section 24. Licensed Charter.

- (1) At an extended pari-mutuel meeting and a grand circuit meeting, a race shall be charted by a licensed charter hired by the track.
- (2) The charter shall be subject to the approval of the commission, pursuant to Section 6(3) of this administrative regulation, and shall be licensed by the United States Trotting Association.
- (3) The charter shall be responsible for providing a complete and accurate chart which shall include the following:
  - (a) The name of the horse;
  - (b) The name of the driver;
  - (c) Date and place of race;
  - (d) Size of track;
  - (e) Track condition and temperature;
  - (f) Type of race (trot or pace);
  - (g) Classification of race;
  - (h) Distance;
  - (i) The fractional times of the leading horse, including the race time;
  - (j) Post position, position at the quarter (1/4), half (1/2), three quarters (3/4), head of the stretch with lengths behind the leader, and finish with lengths behind the leader;
  - (k) Official order of finish;
  - (l) Individual time of each horse;
  - (m) Closing dollar odds if applicable (with favorite designated by an asterisk);
  - (n) The standard symbols for breaks, park outs, and free legged pacers if applicable;
  - (o) The price for which the horse is entered to be claimed less allowances for age and sex if the race is a claiming race; and

- (p) Notations of placings, disqualifications, and claimed horses.
- (4) Horses who are more than twenty-five (25) lengths off the leader may be noted in charts as distanced ("dis").

Section 25. Any variance from commonly-accepted equipment shall be approved by the presiding judge.

Section 26. Duties of the Race Secretary. The race secretary of an association shall be licensed and approved by the commission, pursuant to Section 6(3) of this administrative regulation. The race secretary shall:

- (1) Ensure that all horses racing during the meet have electronic eligibility certificates;
- (2) Be familiar with the age, class, and competitive ability of horses racing at the track;
- (3) Classify and reclassify horses at the meet in accordance with the required conditions of the race;
- (4) List horses in the categories for which they qualify, and ensure that the lists are current and properly displayed in the room in which the declaration box is located for examination by horsemen and others;
- (5) Provide for the listing of horses in the daily program;
- (6) Verify the information contained in entry blanks and declarations;
- (7) Select the horses to start and also the eligible horses from the declarations in accordance with the conditions of the race; and
- (8) Examine nominations and declarations in early closing events, late closing events, and stake events, to verify the eligibility of all declarations and nominations, and to compile lists for publication.

FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the duties, responsibilities, and powers of the judges who preside over standardbred horse races under the jurisdiction of the Commission. This administrative regulation also sets forth the duties of the association racing officials who perform various duties in conducting standardbred horse races.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the judges to effectively govern standardbred race meetings under the jurisdiction of the Commission, and to prescribe the duties of

association racing officials who assist in conducting horse races.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation confers upon the judges the authority to ensure that race meetings are conducted in a fair and efficient manner, and prescribes the duties of association racing officials who perform various functions in conducting races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by granting the judges the authority to preside over race meetings under the jurisdiction of the Commission, and by establishing the duties of association racing officials who assist in conducting horse races.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Commission is affected by this administrative regulation, and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed standardbred racing associations, and the racing officials employed by them, are required to comply with the duties set forth concerning the functions of various racing officials participating in horse races. No particular action will be required of other licensed participants in horse racing to comply with this administrative regulation, except to the extent participants are subject to the authority, direction, and rulings of the stewards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Racing associations are required to employ the racing officials whose duties are set forth in this administrative regulation. No other significant costs are associated with performing the prescribed duties.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Licensed Standardbred racing officials, and the Standardbred judges, will benefit from having their various duties and regulatory guidelines clearly defined.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 2:060. Owners' authorized agents and jockey agents.**

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) vests the Kentucky Horse Racing Commission with the authority to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for authorized owner and jockey agents.

Section 1. Agents Permitted. Any licensed owner, jockey, or apprentice jockey may authorize another person as an agent to act on the licensee's behalf in all matters pertaining to racing in this state and transfer of horses on association grounds, provided the authorization is in writing and defines the powers, limits, and term of the agency.

Section 2. License Required. No person may act as agent on behalf of another licensee in a matter pertaining to racing in this

state, or in the transfer of horses on association grounds, without a current license.

#### Section 3. Owners' Authorized Agents.

(1) If an authorized agent is to act on behalf of more than one (1) owner, a separate agent license shall be obtained by each owner.

(2) An owner seeking to act through an authorized agent shall submit a completed Authorized Agent License Application, KHRC 2-060-01. An application submitted by an owner for an authorized agent license shall be accompanied by the original written agency appointment, signed by the owner and notarized.

(3) If the agency appointment is other than one authorizing broad general powers and qualifies or limits powers of the agent to act on behalf of the principal in any way, then the license, if issued, shall indicate the limitation by the word "qualified" or "limited."

(4) No racing official shall permit any authorized agent whose license indicates a qualified or limited agency to act as an authorized agent until the racing official has inspected a copy of the agency appointment and ascertains whether the act is empowered by agency.

(5) Unless precluded by specified limitations in the agency appointment, a licensed authorized agent may perform on behalf of the licensed owner all acts related to racing in this state or transfer of horses on association grounds that could be performed by the principal had the principal been present. In executing any document on behalf of the principal, an authorized agent shall clearly indicate he or she is acting as an authorized agent and shall specify the principal for whom he or she is acting. When an authorized agent enters a claim for the account of a principal for whom he or she is licensed as an authorized agent, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip.

#### Section 4. Jockey Agents.

(1) No jockey agent shall make engagements for more than two (2) riders. No rider may be represented by two (2) jockey agents at one (1) time.

(2) No person other than a licensed jockey agent may make riding engagements for a rider, except that a jockey not represented by an agent may make his own riding engagements. Any person permitted to make a riding engagement for a rider shall maintain in his or her possession an engagement book and shall record all riding engagements made, which shall be subject to examination by the stewards at any time. No jockey agent may enter the jockey room, paddock, or racing strip during the hours of racing.

(3) Any dispute arising from a conflict of claims for the services of a rider shall be determined by the stewards on the basis of written records submitted by the parties involved.

Section 4. Termination of Agency. An agency shall remain in effect until written notification of revocation from the principal is received by the commission. If a jockey agent is dismissed by his employer, or if a jockey agent discontinues making engagements for a rider, then the jockey agent shall immediately notify the stewards and turn over to the clerk of scales a list of any unfulfilled engagements the jockey agent may have made for the rider.

#### Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Authorized Agent License Application", KHRC 2-060-01.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December

27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the use of authorized agents in horse racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the roles of and restrictions of authorized agents in horse racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation outlines the conditions under which authorized agents are permitted to function in horse racing.

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

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission licensed 161 authorized agents in 2017. This number is consistent from year to 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: Authorized agents are required to obtain a commission license and secure a written agreement between the principal and the agent.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be required to comply with this administrative regulation, other than to obtain a license for a fee of \$150.00. This fee is consistent with previous years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Authorized agents will benefit from obtaining a clear understanding of their roles in horse racing and the restrictions upon their activities.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any necessary funding will be provided from the budget of the Kentucky Horse Racing Commission.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate in licensed horse racing with pari-mutuel wagering thereon in Kentucky.

(9) TIERING: Is tiering applied? Tiering is not applied because this amended regulation will apply to all similarly situated licensees in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

**810 KAR 2:070. Thoroughbred and other flat racing associations.**

RELATES TO: KRS 230.215(2), 230.260(8)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

230.215(2) and 230.260(8) require the commission to promulgate administrative regulations establishing conditions governing horse racing. This administrative regulation establishes requirements for thoroughbred and other flat racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track.

(1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

- (a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and
- (b) Health and safety of horses that are stabled, exercised, or entered to race at the association.

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

- (a) Neat and clean;
- (b) Painted; and
- (c) In good repair.

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

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

Section 3. Starting Gate.

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

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

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

Section 4. Stabling.

(1) An association barn and stall shall be:

- (a) Constructed of fire-resistant material;
- (b) Clean, sanitary, and equipped for adequate drainage; and
- (c) Maintained in good repair.

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

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials.

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

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

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

Section 6. Distance Pole Markings.

(1) A thoroughbred or other flat racing association shall have:

- (a) Red and white quarter poles;
- (b) Green and white eighth poles; and
- (c) Black and white 16th poles.

(2) Permanent markers shall be located at each standard Arabian, quarter horse, paint horse and appaloosa distance as applicable. Distance pole markers and permanent markers shall be located where they can be seen clearly from the stewards' stand. Each post shall be identified by color as follows: 220 yds., white; 250 yds., blue; 300 yds., yellow; 330 yds., green; 350 yds., red; 400 yds., black; 440 yds., orange; 550 yds., blue and white stripe; 660 yds., yellow and white stripes; 770 yds., green and white stripes; and 870 yds., red and white stripes. In addition, for appaloosa races, markers shall be located at six (6) and six and one-half (6 1/2) furlongs to be painted yellow and white and orange and white, respectively.

Section 7. Lighting.

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

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

Section 8. Facilities for Stable Employees.

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

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

Section 9. Facilities for Jockeys.

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

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Commission.

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

(2) To assist in the conduct of official business, an association shall provide the following to the commission:

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

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

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

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

Section 12. Manure Removal.

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

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

Section 13. Photo Finish Cameras.

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

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

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

Section 14. Race Replays.

(1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce race replays that clearly record each race from start to finish.

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

(3) (a) A race replay shall be:

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

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

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



commission.

(4) Race replays shall be made available:

- (a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and
- (b) To members of the press.

#### Section 15. Ambulances.

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

(2) An ambulance shall be:

- (a) Equipped;
- (b) Manned;
- (c) Ready for immediate duty; and
- (d) Located at an entrance to the racing strip.

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

- (a) Equipped with at least two (2) beds; and
- (b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association has an ambulance on standby on its premises during racing hours which:

(a) Can transport an injured individual to a fully-equipped hospital emergency room in five minutes or less; and:

(b) Is manned by a certified paramedic and certified emergency medical technician.

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

- (a) Heart monitor and defibrillator;
- (b) Cellular phone; and
- (c) Airways intubation equipment.

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

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

- (1) Outriders;
- (2) Pari-mutuel department;
- (3) Starting gate;
- (4) Public address announcer; and
- (5) Clerk of the scales.

#### Section 19. Fire Prevention.

(1) An association shall have a fire prevention and suppression program.

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

- (a) Has inspected the association; and
- (b) Certified that the association plant and stable area meets fire safety requirements.

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

(4) An association shall prohibit:

- (a) Smoking in stalls, under shed rows, and in feed rooms;
- (b) Open fires and oil or gas lamps in the stable area; and
- (c) Locking of stalls occupied by horses.

#### Section 20. Association Security.

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

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

(3) An association shall exclude from association grounds a person designated to be denied access by order of the commission or stewards.

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

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

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

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

#### Section 21. Vendors and Suppliers.

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

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

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

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

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

#### Section 22. Ejection or Exclusion From Association Grounds.

(1) An association shall for probable cause eject or exclude from association grounds a person:

(a) Believed to be engaged in:

- 1. A bookmaking activity;
- 2. Solicitation of bets; or
- 3. Touting;

(b) Who as a business or for compensation, either directly or indirectly:

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

2. Participated in the transaction; or

(c) Who attempted to use tax exempt admissions credentials not issued to him by the association.

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

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

(b) An accredited member of the news media;

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

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

- 1. Racing official;
- 2. Association security guard; or
- 3. Association public relations department representative.

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

(b) A report shall state the:

- 1. Name of person ejected or excluded;
- 2. Reasons for the ejection or exclusion; and
- 3. Facts relating to the ejection or exclusion.

Section 23. Ownership of Associations. An association shall file with the commission a revised list of persons whose identity is required by 810 KAR 3:010 immediately upon transfer of a beneficial interest or control in the association.

#### Section 24. Plan of Association Grounds.

(1) An association shall file with the commission maps and plans of association grounds, showing:

- (a) Structures;
- (b) Piping;
- (c) Fire hydrants;
- (d) Fixed equipment;
- (e) Racing strip, noting elevation as filled, drained, and



gapped; and

(f) Composition of track base and cushion.

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

Section 25. Attendance and Badge List Reports; Tax Exempt Credentials.

(1) An association shall file with the commission a copy of the form required by KRS 137.180 and 138.480, "Race Track Pari-mutuel and Admissions Report," Revenue Form 73A100.

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

Section 26. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

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

(2) A comparison to the prior year.

Section 27. Horseman's Account and Horseman's Bookkeeper.

(1) An association shall maintain a bank account that shall:

(a) Be separate from its other accounts;

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

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

1. Purses;
2. Stakes;
3. Rewards;
4. Claims; and
5. Deposits.

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

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

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

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

(b) If a horse is disqualified and an appeal has been filed, purse money shall be available to other participants entitled to purse money in the amount they would have earned had a horse not been disqualified. The purse money to which the disqualified participant would be entitled shall be held in escrow by the association until final adjudication of a dispute over which persons are entitled to money.

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

1. Person to whom purse money is payable; or
2. Authorized representative of the person to whom purse money is payable.

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

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

Section 28. Outriders.

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

(2) An outrider shall:

(a) Escort starters to the post; and

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

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

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

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

(a) Present on the racing strip;

(b) Mounted; and

(c) Ready to assist in the:

1. Control of an unruly horse; or
2. Recapture of a loose horse.

Section 29. Safety Equipment.

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

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

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

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

(2) Any person mounted on a horse or stable pony on any location under the jurisdiction of the commission, all assistant starters, and any person handling a horse in a starting gate shall wear a safety vest at all times. If requested by a commission official, the person shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

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

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

(c) ASTM International Standard, ASTM F2681-08;

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

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

Section 30. Valets.

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

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

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

(4) A valet shall:

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

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

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

(d) Attend the weighing out of his rider.

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

(6) An association shall provide uniform attire for all valets that shall be worn whenever they perform their duties within public view.

Section 31. Minimum Purse and Stakes Values.

(1) An association shall not program or run any race for which the purse is less than \$2,000 in cash, without special permission of the commission.

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

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

(a) Nomination;

(b) Eligibility;

(c) Entrance;

(d) Starting fees;

(e) Cash awards;

(f) Premiums;

(g) Prizes; or

(h) Objects of value.

Section 32. Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission.

Section 33. Two (2) Year Old Races. Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 34. (1) (a) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

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

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

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

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

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

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

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

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky

Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by no less 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the day-to-day operation of licensed thoroughbred and other flat facing racetracks racing associations in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the operational, physical, and equipment requirements for Kentucky thoroughbred and other flat facing racetracks.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation establishes the conditions under which racetracks are required to operate during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that thoroughbred and other flat facing racetracks are operated during horse race meetings in Kentucky in a manner consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's thoroughbred racetracks licensed racetracks will be affected by this administrative regulation, as well as the licensees who participate in racing at the racetracks.

(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 racetracks will be required to conform to the operational and physical requirements for racing established in this administrative regulation.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation, as Kentucky's racetracks have operated in accordance with these requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Kentucky's licensed thoroughbred racetracks and the licensees who participate in racing at the tracks will benefit from having their duties and guidelines clearly defined.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be required to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate in licensed horse racing with pari-mutuel wagering thereon in Kentucky.

(9) TIERING: Is tiering applied? Tiering is not applied because this amended regulation will apply to all similarly situated licensees in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.300.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 810 KAR 2:080. Standardbred racing associations.

RELATES TO: KRS 230.215, 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to regulate horse racing in Kentucky. This administrative regulation establishes requirements for the operation of standardbred racing associations.

Section 1. During the course of its race meetings, a licensed standardbred association shall display in the racing association's office the license issued by the commission for the current year.

Section 2. Default in Payment of Purses. An association shall not default in the payment of any purse that has been offered in a race.

Section 3. Time to File Claims for Unpaid Purses. Unless a claim for an unpaid purse is filed with or appealed to the commission within twelve (12) months after the date the race is contested, the commission may release any performance bond it holds related to the purse.

Section 4. If at a meeting of a licensed association, a race is contested that has been promoted by another party, and the promoters default in the payment of the amount raced for, the same liability shall attach to the licensed association as if the race had been offered by the licensed association.

Section 5. Minimum Advertised Purse or Schedule of Purses. If an association advertises a minimum purse and conducts a race for less than the advertised minimum, the association shall be fined the difference between the advertised minimum and the lesser purse for which such race was conducted, and the proceeds may be distributed among the money winning horses in proportion to their respective winnings.

Section 6. Removal of a Horse from the Grounds. A horse shall not be ordered off the grounds unless a minimum of twenty-four (24) hours' notice (excluding Sunday) is provided to the person in charge of the horse. A person shall not fail to remove a horse after proper notice.

Section 7. Driver Awards. An association shall not advertise to pay or pay any award other than to an owner, nominator, or breeder of a money-winning horse, except that an award may be made to a driver of a horse breaking or equaling an association or world record, or to a leading driver at a meeting.

##### Section 8. Paddock Rules.

(1) An association conducting an extended pari-mutuel meeting shall provide a paddock or receiving barn.

(2) The paddock or receiving barn shall be completely enclosed with a man-tight fence and each opening through the fence shall be policed by a person licensed by the commission who shall exclude unauthorized personnel. A daily record of all persons entering or leaving the paddock from one (1) hour prior to the first post time until all races on that program have been completed shall be maintained on a form provided by the association and approved by the commission.

(3) A horse shall be in the paddock at the time prescribed by the presiding judge, but in any event at least one (1) hour prior to post time of the race in which the horse is to compete. Except for a warm up trip, a horse shall not leave the paddock until called to the post.

(4) A person entitled to admission to the paddock shall be at least sixteen (16) years old and shall include:

(a) An owner of a horse competing on the date of the race;

- (b) A trainer of a horse competing on the date of the race;
  - (c) A driver of a horse competing on the date of the race;
  - (d) A groom and caretaker of a horse competing on the date of the race;
  - (e) An official whose duties require the presence of that person in the paddock or receiving barn;
  - (f) An official of the commission;
  - (g) The designated representative of the horseman; and
  - (h) A person approved by the presiding judge.
- (5) Unless permission is granted by the judges, a driver, trainer, groom, or caretaker, once admitted to the paddock or receiving barn, shall not leave the paddock or receiving barn, other than to warm up a horse, until the race or races for which the horse was admitted is contested.
- (6) All persons, except drivers in the driver's stand, shall leave the paddock as soon as that person's duties are completed for the race or races for which that person was admitted.
- (7) A member of a registered stable, other than the driver, shall be entitled to admission to the paddock on any day a horse owned by that stable is racing.
- (8) During racing hours, an association shall provide the services of a farrier within the paddock.
- (9) During racing hours an association shall promptly provide suitable extra equipment as may be necessary.

**Section 9. Photo Finish, Film Patrol, Head Numbers, Starting Gate.**

- (1) At an association where pari-mutuel wagering is allowed, a photo finish, film patrol, head numbers, saddle pads, and starting gate shall be used.
- (2) At an extended pari-mutuel meeting, the association shall provide for a back-up starting gate.
- (3) If the judges use a photo to determine the order of finish, the photo shall be posted for public inspection.
- (4) Photo finish equipment shall include a stationary camera, mounted above the finish wire and perpendicular to the race track, along with a spinner or stationary target.
- (5) A camera utilizing a shutter between the film and the race track during the actual finish of a race, or which has a field view greater than twelve (12) inches at the finish line, shall not be utilized. The presiding judge shall verify that the photo finish equipment is in working order prior to each racing program.

**Section 10. Driver Insurance.** An association shall prepare and prominently display, in the race secretary's office, a statement containing the name of the company providing driver insurance coverage.

**Section 11.** (1) (a) An association at an extended pari-mutuel meeting shall be equipped with a scientifically-reliable breath, blood, or urine alcohol testing device approved by the commission and operated by a person certified to use such a device. A licensee may be required to submit to a breath analyzer test at the discretion of the presiding judge or his assistant, based on the presiding judge's reasonable suspicion that the person might have an impermissible amount of alcohol or illegal substances in his system.

- (b) A person shall not be permitted to drive:
1. If a breath, blood, or urine alcohol testing device reveals at the time of the person's entry into the paddock a reading of 0.05% or more of alcohol or any trace of illegal controlled substance either in the breath, blood, or urine of that individual; or
  2. If, in the opinion of the presiding judge, a person is impaired to the point the person's driving skills or judgement may be affected.

(c) At the time of entry into the paddock, if a breath, blood, or urine alcohol testing device given to a person who is scheduled to drive reveals the presence of 0.05% or more of alcohol or any trace of an illegal controlled substance, the presiding judge shall charge the driver with a violation pursuant to Section 15(1) of this administrative regulation.

- (2) A person shall not be permitted to act as a judge, starter, or marshal if a breath, blood, or urine alcohol testing device reveals a

presence of 0.05% of alcohol or any trace of illegal controlled substance in the blood, urine, or breath of that individual at any time on a race day during which that person is scheduled to officiate. If alcohol or illegal substances are found to be present, that individual shall be immediately relieved of duties for that program and a report shall be made prior to the next racing day to the commission for appropriate action. The individual shall be charged with a violation pursuant to Section 15(1) of this administrative regulation.

(3) In any meeting other than an extended pari-mutuel meeting, a driver, judge, starter, driver of the starting gate, and marshal shall submit to a breath, blood, or urine alcohol test if requested by the presiding judge. The result of the test shall be governed by subsection (2) of this section, and the individual shall be charged with a violation pursuant to Section 15(1) of this administrative regulation if the impermissible amount of alcohol or illegal substances are found to be present.

**Section 12.** A saddle pad in use at an association conducting an extended pari-mutuel meeting shall be standardized consistent with a format to be established by the United States Trotting Association.

**Section 13. Horse Ambulance.** During an extended pari-mutuel race meeting, an association shall provide a properly equipped and properly manned horse ambulance for the removal of injured or dead animals from the track. The horse ambulance shall be present on the grounds at any programmed race, time trial, or qualifying race under the jurisdiction of the commission. A horse ambulance shall be equipped with a screen for use if it is necessary to destroy an animal in view of the general public, and with a winch to lift dead or injured animals onto the ambulance. It shall be the responsibility of the commission to ensure that proper supplies of alcohol, water, euthanasia medication, and horse leg splints are aboard the ambulance.

**Section 14. Emergency Medical and Ambulatory Services for Persons.**

(1) At an association where any programmed race, time trial, or qualifying race under the jurisdiction of the commission takes place, it shall be the responsibility of the association to:

- (a) Provide a licensed paramedic, emergency medical technician, or the equivalent; and

(b) Maintain in good operating order an ambulance or other suitable transportation, capable of transporting injured parties to an appropriate medical facility, available and stationed at an entrance to the racing surface allowing for visual contact with the race in progress.

(2) The medical personnel present shall make a prompt response if one (1) or more drivers or horses are involved in an accident or there is a need for emergency transportation.

(3) The ambulance shall be stationed at every programmed race, time trial, and qualifying race under the jurisdiction of the commission.

(4) The emergency medical personnel and the ambulance shall be on the premises during the period beginning one (1) hour prior to post time for the first race on the program, or first qualifying race, through the conclusion of the racing program. If the ambulance must leave its station for any reason, a replacement ambulance shall be present on the association grounds before the next race is run.

**Section 15. Commission Office.** Each association shall provide suitable facilities for the commission in the conduct of its business. Failure to do so within ten (10) days after written notification by the commission setting out the deficiencies of said facilities shall subject said licensee to a fine up to \$250 per day for each day that suitable facilities are not thereafter provided.

**Section 16. Policing of Premises.** The association shall provide a sufficient number of guards and watchmen to maintain order on all parts of the racing enclosure. No tipster shall be allowed on any part of the licensed premises, no groom or stable attendant shall loiter in

the betting ring or any place else with the evident intention of engaging in tipping for any remuneration or for nothing, and anyone so found shall be immediately escorted to the general manager of the licensee and his license shall be taken up, and the licensee shall thereafter exclude said person from the licensed premises.

Section 17. Supervision of Peddlers. The association shall supervise the practice and methods of so-called merchandise peddlers who may have entry to the track enclosure. Such supervision shall be extended to any other stables where horses are lodged which may be eligible to race at said meeting. However, the association shall not by virtue of this rule or otherwise restrict the open purchasing or attempt to control or monopolize said business or proper selling of merchandise to owners, trainers, or stable employees.

Section 18. Drinking Fountains and Rest Rooms. The association shall furnish an adequate number of free drinking water fountains, comfort stations, and washrooms throughout its grounds and buildings for the use of the public.

Section 19. Stabling of Horses. Any horse racing at a licensed meeting must be stabled within the confines of that track; provided, however, in case of necessity such a horse may be stabled within the confines of an adjacent Kentucky race track, or in another location approved by the commission. The association holding the race meeting shall provide for temporary stabling of horses, eligible to race, which are brought to the races from approved outside stable space.

Section 20. Watchmen in Stable Area. Each association shall maintain and furnish complete and adequate watchman service night and day in and about all stable enclosures.

Section 21. Duties of Watchmen.

(1) Watchmen so employed shall be individually responsible for the certain part of the stable enclosure where they are on duty and shall immediately investigate and report the presence of anyone during the night or day who may be within said stable enclosure without possessing proper credentials.

(2) A letter of instructions to all watchmen shall be addressed to each of them by the association, covering fully their duties and their strict obligation to keep stable enclosures free from outsiders and hangers on, and a copy thereof furnished to the commission.

Section 22. Stable Enclosures Fenced. All stable enclosures must be properly fenced and admission granted only on proper license or credentials actually shown to the gatemen. This rule may be waived with commission approval.

Section 23. Betting by Racing Officials. Betting by racing officials is prohibited.

Section 24. Betting by Paddock Employees. Any track employee working in the paddock area is not allowed to bet or pass information to outsiders for betting purposes.

Section 25. Exculpatory Clauses. Effective January 1, 1997, agreements (including but not limited to stall applications, entry forms, and condition books) between persons or entities licensed by the Kentucky Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licenses associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

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

(2) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of

use, injury or damage to horses arising from the use of grass fields ("gallops") owned or controlled by the licensed association. Subject to the above exceptions, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. No licensee shall attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

Section 26. Constructive Notice to and Consent of Licensees. All persons licensed by the Kentucky Horse Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this regulation shall be void and unenforceable in their entirety.

Section 27. Model Provision. The following provision shall be deemed to comply with the limitations set forth in this regulation: All Kentucky Horse Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, drivers, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in such activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

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

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

Section 28. Persons Permitted on Licensed Premises.

(1) A licensee of the commission shall immediately report to association security personnel the presence of any person not authorized by this administrative regulation to be on all or any portion of association grounds.

(2) A licensee shall take all necessary measures that are not prohibited by law to maintain the security of horses on association grounds and to protect horses from injury due to mistreatment, fright, or tampering.

(3) Persons not employed by, or not the invited guests of, the racing association or the owner or trainer of a horse scheduled to run that day shall be excluded from the paddock area, race strip, and appurtenant portions of the track, with the following exceptions;

(a) Members, officers, and employees of the commission;

(b) Racing officials;

(c) Police officers;

(d) Officials and directors of the United States Trotting Association;

(e) Officials and directors of Standardbred Canada; and

(f) Duly-accredited members of the news media.

Section 29. Admission to Premises. A current badge or button issued by the commission, or a current badge or button issued by the Association of Racing Commissioners International, shall be honored for admission to any location on association grounds

operating under the jurisdiction of the commission.

Section 30. Limited Admission.

(1) A person not possessing and displaying a properly-issued badge or identification card shall not be permitted to enter any part of the licensed premises except the clubhouse, grandstand, or other areas open to patrons or the general public, with the following exceptions:

- (a) Members, officers, and employees of the commission;
- (b) Racing officials;
- (c) Police officers;

(d) Persons permitted into the paddock area, race strip, and appurtenant portions of the track under Section 1(3) of this administrative regulation; and

(e) Persons permitted into the stable area under Section 3(2) of this administrative regulation.

(2) Only the following persons performing official duties within the stable area shall be entitled to enter the stable area of a licensee:

- (a) Members, officers, and employees of the commission;
- (b) Members and employees of the association;
- (c) Racing officials;
- (d) Police officers;
- (e) Owners;
- (f) Trainers;
- (g) Grooms; and
- (h) Others who are performing official duties within the stable area.

Section 31. Identification Cards and Badges. (1) Cards and badges.

(a) A licensee shall issue identification cards or badges only to:

- 1. The licensee's officers, employees, guards, and watchmen;
- 2. Drivers; and

3. Owners and trainers and their employees, assistants, grooms, and attendants.

(b) A licensee shall have the right to recall identification cards or badges upon reasonable cause to believe a violation of the law has occurred or as reasonably necessary to maintain effective security procedures.

(c) Identification cards or badges shall be collected from owners and trainers and their employees, assistants, grooms, and attendants when the horses of the owners or trainers are removed from the licensed premises.

(d) An identification card or badge shall not be transferable.

(e) An identification card or badge shall be subject to forfeiture if utilized or attempted to be utilized by a person other than the person to whom it was issued.

(f) The commission shall specifically identify by color designation each association under its control. The licensee shall only authorize admittance to the association upon the showing of a properly color-coded identification card or badge. An identification card or badge shall be subject to forfeiture if the holder utilizes the card or badge to attempt to gain entry or access to an association other than the one for which the card or badge applies.

(g) Any identification card or badge may be declared forfeit by the executive director of the commission, the designated representative of the commission, or the presiding judge upon reasonable cause to believe a violation of the law has occurred, or as reasonably necessary to maintain effective security procedures.

(2) Enforcement. The director of security designated by the commission shall have the primary responsibility of enforcing this administrative regulation.

Section 32. Association with Undesirables Prohibited.

(1) (a) An owner, driver, trainer, groom, attendant, or other person having charge of or access to a harness race horse shall not associate with, consort with, or in any manner communicate with a known gambler, bookmaker, tout, or persons of similar pursuits either on or off association grounds.

(b) An owner, driver, trainer, groom, attendant, or other person having charge of or access to a harness race horse shall be presumed to have knowledge of the reputation or notoriety of

persons with whom he or she has communications regarding horse racing.

(2) A person under the jurisdiction or control of the commission shall have a duty to immediately report knowledge of any of the following activities to the commission or one (1) of its appointed representatives:

(a) Offer or promise of a bribe;

(b) Request or suggestion for a bribe;

(c) Offer, promise, request, or suggestion of any other improper, corrupt, or fraudulent act or practice that could affect the outcome of a race; or

(d) Request or suggestion that any race be conducted otherwise than fairly and in accordance with the law.

Section 33 Tack Inspection.

(1) For the purpose of maintaining the safety and security of the association grounds, the commission or its designated representative shall have the right to permit an authorized person to inspect or examine the personal effects or property of every trainer, driver, stable foreman, groom, authorized agent, and veterinarian, by entering in or upon:

(a) The stable, rooms, or other places within the track enclosure where a race meeting is held; or

(b) Other tracks or places where horses eligible to race at a race meeting are kept.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the day-to-day operation of licensed Standardbred racing associations in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the operational, physical, and equipment requirements for Kentucky racetracks.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation establishes the conditions under which standardbred racetracks are required to operate during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will



assist in the effective administration of the statutes: This administrative regulation ensures that standardbred racetracks are operated during horse race meetings in Kentucky in manner consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's standardbred licensed standardbred racetracks will be affected by this administrative regulation, as well as the licensees who participate in racing at the racetracks.

(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 standardbred racetracks will be required to conform to the operational and physical requirements for racing established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation, as Kentucky's standardbred racetracks have operated in accordance with these requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Kentucky's Standardbred racetracks and the individual licensees who participate in racing at the tracks will be benefit from having their duties and regulatory guidelines clearly defined.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be required to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate in licensed standardbred horse racing with pari-mutuel wagering thereon in Kentucky.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will apply to all similarly situated licensees in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.300.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 3:001. Definitions.**

RELATES TO: 810 KAR Chapter 3

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 3.

#### Section 1. Definitions.

(1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(3) "ARCI" means the Association of Racing Commissioners International.

(4) "Association" is defined by KRS 230.210(1).

(5) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(6) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811 KAR 4:050 and 810 KAR 5:030

(7) "Commission" means:

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

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(10) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Directive" means an official order issued by the commission or the executive director.

(12) "Draw" means the process of determining post positions by lot.

(13) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(14) "Early closing race" means in standardbred racing a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(15) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(16) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(17) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(19) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(20) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(21) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(22) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(23) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(24) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(25) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(26) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, or other legal entity holding a license issued by the commission.

(27) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(28) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(29) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules which, if true, would exclude that horse or driver from racing.

(30) "Purse" means the gross cash portion of the prize for which a race is run.

(31) "Race" means a running contest between horses ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(32) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(33) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(34) "Ruled off" means denial of entrance to premises of any association under jurisdiction of the commission.

(35) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(36) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(37) "Simulcasting" is defined by KRS 230.210(11).

(38) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(39) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.

(40) "Suspended" means withdrawal of racing privileges by the stewards or commission.

(41) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices, that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(42) "USTA" means the United States Trotting Association.

(43) "Workout" means in flat racing the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(44) "Year" means twelve (12) consecutive months beginning with January and ending with December.

FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018  
FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy  
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 3.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 3 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defines terms that are used in the regulations in 810 KAR Chapter 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 3.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's licensed race tracks and all individual licensed participants in horse racing are potentially affected by this administrative regulation's establishment of definitions pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed racing associations and individual participants in horse racing will be required to adhere to the requirements and rules set forth in the regulations in Title 810 KAR pertaining to horse racing. This administrative regulation defines terms that appear in 810 KAR Chapter 3.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.260.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 810 KAR 3:010. Licensing of racing associations.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(9), 230.280, 230.300(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) vests the Kentucky Horse Racing Commission with the authority to promulgate regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.280 prohibits any person from conducting a horse race meeting for any stake, purse, or reward within the Commonwealth without securing the required license from the commission. KRS 230.260(9) authorizes the commission to prescribe by administrative regulation application forms for licenses. KRS 230.300 authorizes the commission to issue licenses to conduct race meetings. This administrative regulation establishes licensing application procedures and requirements for conducting horse racing at horse race meetings in the Commonwealth.

##### Section 1. Definitions.

(1) "Nominal change in ownership" is defined in 810 KAR 3:001, Section 1(26).

(2) "Principal" is defined by KRS 230.210(17).

- (3) "Publicly traded corporation" means a corporation that:
- (a) Has voting securities registered under Section 12 of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78a et seq.;
  - (b) Issues securities subject to Section 15(d) of the 1934 Act;
  - (c) Has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, 48 U.S.C. 77a et seq.; or
  - (d) Is required to file under the 1934 Act.
- (4) "Substantial change in ownership" is defined by 810 KAR 3:001, Section 1(39).

#### Section 2. License Applications.

- (1) New license applications. A person or legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license pursuant to KRS 230.300(1).
- (2) Renewal applications. Racing association licenses shall be renewed annually in accordance with KRS 230.300.
- (3) An initial or renewal license application to conduct a horse racing meeting shall be submitted on the form "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering," KHRC 3-010-1.
- (4) An applicant that is unable to provide information required on the application shall fully explain and document to the satisfaction of the commission its inability to provide the information, and shall provide the information promptly upon being able to do so.

#### Section 3. License and Investigation Fees.

- (1) An initial applicant for an initial license shall submit with the application a non-refundable initial license fee of \$5,000.
- (2) Initial applicants shall submit with the application an investigation fee of \$10,000. If the commission determines that investigation of a renewal applicant or an applicant that is proposing to undergo a substantial change in ownership is necessary, the applicant shall pay an investigation fee of \$10,000. The investigation fee shall pay all costs incurred by the commission in reviewing the application.
- (a) Any portion of the investigation fee not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the withdrawal, rejection, or approval of the license application or proposed change of ownership.
- (b) If additional costs are incurred in the conduct of the investigation, the applicant shall submit a cashier's check payable to the commission in the amount requested by the commission within ten (10) days of receipt of the request. Failure to submit this payment shall result in suspension of processing the license application or proposed change of ownership and may result in denial of the license or proposed change of ownership.

#### Section 4. Licensing Criteria.

- (1) The commission shall issue a license if it determines that:
- (a) The applicant meets all requirements of KRS Chapter 230 and this KAR Title 810;
  - (b) The applicant is qualified and financially capable of operating a race track;
  - (c) The applicant will conduct racing in accordance with KRS Chapter 230 and KAR Title 810;
  - (d) The applicant will conduct racing in accordance with the highest standards and the greatest level of integrity; and
  - (e) The issuance of a license will ensure the protection of the public interest.
- (2) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available which it deems relevant to its determination of whether the applicant is qualified to hold a license, including:
- (a) The integrity of the applicant and its principals, including:
    - 1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);
    - 2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;
    - 3. Whether the applicant or its principals has been a party to

proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes.

(b) The quality of physical facilities and equipment, including any improvements and equipment proposed or existing in the applicant's facility;

(c) If a new applicant, the schedule for completion of a racing facility and the feasibility of meeting the schedule;

(d) The types and variety of pari-mutuel horse racing which the applicant proposes to offer;

(e) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully;

(f) If a new applicant, the status of governmental actions required to approve or facilitate the applicant's facility;

(g) The management ability of the applicant and its principals;

(h) Compliance of the applicant with applicable statutes, charters, ordinances, or regulations;

(i) The efforts of the applicant to promote, develop, and improve the horse racing industry in Kentucky;

(j) The impact of the facility upon the Commonwealth of Kentucky in the following areas:

- 1. Employment created, purchases of goods and services, public and private investment, and taxes generated;
- 2. Ecological and environmental impact;
- 3. Social impact; and
- 4. Cost of public improvements.

(k) The extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the license is sought; and

(l) The effects of the location of the track, including the following:

- 1. Number, nature, and relative location of other licensees; and
- 2. Minimum and optimum number of racing days sought by the applicant.

Section 5. Racing Date Assignments. In assigning racing meetings and race dates to applicants, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at association race tracks, including:

(1) The types and dates of racing meetings held elsewhere, both within and outside of the Commonwealth;

(2) The effects that various types of pari-mutuel racing have upon one another;

(3) The quality of horse racing provided at other racetracks;

(4) Dates traditionally awarded racetracks in the past;

(5) The past performance of the licensee;

(6) Whether the licensee has complied with KRS Chapter 230 and Title 810 KAR;

(7) Whether the assignment of racing dates will maximize revenues to the state;

(8) Whether the assignment of racing dates will adversely affect the public health, welfare, and safety;

(9) The projected stability of the racing dates to be awarded; and

(10) The stability of the racing circuit within and outside the Commonwealth.

#### Section 6. License Applicant Presentation.

(1) An applicant that has submitted a completed license application and all accompanying fees may request to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

(2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant's suitability. The admission of supplemental information shall be subject to the discretion of the commission.

Section 7. Additional Information. At any time prior to issuing a license, the commission may request additional information if the information would assist the commission in deciding whether to

issue a license, including:

- (1) Copies of any documents used by the applicant in preparing the application; and
- (2) Contracts between the applicant and third parties related to operations.

#### Section 8. Change in Ownership.

(1) A change in ownership shall be reported to the commission on the Kentucky Horse Racing Commission Racing Association Change of Control Form.

(2) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change is based.

(3) Notice of a change of ownership shall not be required for:

(a) A nominal change of ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in an association, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the association.

(4) Notice of a substantial change in ownership shall be filed with the commission prior to the execution of the documents upon which the proposed substantial change is based and shall constitute a request for approval of the change.

(a) Absent prior written approval from the commission, a substantial change in ownership shall result in termination of the license.

(b) Any attempt to effect substantial change in ownership not in writing shall be considered void by the commission.

Section 9. Material Modification of Proposed or Existing Facility. A new applicant or association with an existing facility shall not materially alter the grounds or facilities after a license has been issued for that facility without prior written approval of the commission or, if designated by the commission, the executive director of the commission.

#### Section 10. Late Fee.

(1) A licensee that fails to conduct racing after the commencement date specified in the license may be subject to a late fee not to exceed \$15,000 per day.

(2) The amount of the late fee shall be based on the economic impact caused by the licensee's failure to perform.

(3) The late fee shall not be imposed for a particular day if the licensee can prove to the satisfaction of the commission that the cause of delay was:

(a) Beyond the control and without the fault or negligence of the licensee, its contractors, and subcontractors; or

(b) The default of a contractor or subcontractor, if:

1. Arising from causes beyond the control of the licensee, its contractors, and subcontractors; and

2. The supplies or services to be furnished by the contractor or subcontractor were not obtainable from other sources in sufficient time for the licensee to meet the completion date.

#### Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering Form", KHRC 3-010-1; and

(b) "Kentucky Horse Racing Commission Racing Association Change of Control Form", KHRC 3-010-2.

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

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for applying for a license to conduct racing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear guidelines concerning the process by which applications for a license to conduct racing in the Commonwealth of Kentucky are reviewed and approved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.300 requires any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky to apply for a license to do so. This administrative regulation sets forth the procedures and requirements for applying for a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the commission to issue licenses to conduct a horse racing meeting pursuant to KRS 230.300 in a consistent and systematic way.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects applicants for a license to conduct horse racing in the Commonwealth. Currently there are seven licensed race tracks operating in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a license under this administrative regulation will be required to file initial and renewal applications and corresponding fees to obtain and maintain a license to conduct horse racing in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants for a new license are assessed a fee of \$5,000. Initial applicants are assessed a \$10,000 investigation fee, the unused portion of which is returned to the applicant. The investigation fee may also be charged to renewal applicants or where a licensee proposes undergoing a change of ownership.

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

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes that license and investigation fees are applicable to initial applicants, and that investigation fees may be charged for a licensee to renew a license or when a substantial change in ownership is to occur.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission and racing association applicants 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 230.215, 230.240, 230.260, 230.280, 230.290, KRS 230.300, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Increase

Expenditures (+/-): Neutral

Other Explanation: Any increase in revenues generated by this amended administrative regulation will be dependent on the number of initial license applicants and renewal applicants that have undergone a substantial change in ownership.

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 3:020. Licensing of racing participants.**

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(4), 230.290(2), 230.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.310(1) authorizes the commission to establish licensing requirements for participation in horse racing. This administrative regulation establishes licensing procedures and requirements for participation in horse racing.

#### Section 1. Definitions.

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

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

#### Section 2. Persons Required to Be Licensed.

(1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission.

(2) License categories shall include:

- (a) Association employee;
- (b) Assistant trainer;
- (c) Claiming;
- (d) Commission member;
- (e) Commission employee;
- (f) Dental technician;
- (g) Driver;
  - 1. Qualifying-fair (QF) license;
  - 2. Provisional (P) license; and
  - 3. Full (A) license;
- (h) Driver/trainer;
- (i) Equine therapist;
- (j) Exercise rider;
- (k) Farm manager or agent;
- (l) Farrier;
- (m) Farrier apprentice;
- (n) Jockey;
- (o) Jockey agent;
- (p) Jockey apprentice;
- (q) Matinee driver;
- (r) Mutuel employee;
- (s) Owner;
- (t) Owner (Temporary);
- (u) Owner/assistant trainer;
- (v) Owner/trainer;
- (w) Owner/trainer/driver
- (x) Owner/driver;
- (y) Racing department employee;
- (z) Racing official;
- (aa) Special event employee;
- (bb) Stable employee;



- (cc) Steeplechase jockey;
- (dd) Trainer;
- (ee) Vendor;
- (ff) Vendor employee;
- (gg) Veterinarian;
- (hh) Veterinary assistant; and
- (ii) Veterinary technologist or technician.

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

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

1. A completed written application on the form Licensing Application, 3-020-1, or a multi-jurisdictional license form pursuant to Section 8 of this administrative regulation; and

2. The fee required by Section 6 of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation.

(c) A conditional license may be issued by the commission or its designee upon submission of a written application.

### Section 3. General License Application Requirements for All Applicants.

(1) Any person required to be licensed by Section 2 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

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

(b) An application shall be submitted no later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation.

(c) The license application shall be reviewed and the license issued by commission personnel.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his or her agent shall result in an immediate license suspension, revocation, refusal, or denial, or imposition of a fine by the commission or the chief racing steward or presiding judge.

(4) (a) An applicant for licensing shall be a minimum of sixteen (16) years of age except as provided by paragraph (b) of this subsection. An applicant may be required to submit a certified copy of his or her birth certificate or work permit.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the stewards or judges.

(5) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(6) The commission shall provide notice to an applicant that the license has been issued or denied. If all requirements for licensure are met, a license shall be issued to the license applicant.

### Section 4. Additional Licensing Requirements for Standardbred Driver's License.

(1) A person desiring to drive a harness horse at a race meeting licensed by the commission shall obtain a license from:

- (a) The commission; and
- (b) The United States Trotting Association, Standardbred

Canada, or appropriate international harness racing governing agency.

(2) Commission licenses. A driver's license from the commission shall be issued in one of the following categories:

(a) A qualifying-fair (QF) license which shall be valid for fairs, matinees, qualifying races, and if approved by the presiding judge, nonwagering races at extended pari-mutuel meetings;

(b) A provisional (P) license which shall be valid at fairs, matinees, qualifying races, and extended pari-mutuel meetings; or

(c) A full (A) license which shall be valid at all race meetings.

(3) License advancement. An applicant shall initially obtain a qualifying-fair license. Advancement to a provisional license and a full license shall be determined by Rule 17, Sections 1 through 10, of the United States Trotting Association, 2009/2010.

(4) General qualifications. An applicant for a driver's license shall:

(a) 1. Be at least sixteen (16) years of age for a (QF) license;

2. Be at least eighteen (18) years of age for a (P) or (A) license; and

3. Not be denied a driver's license solely on the basis of age if the applicant has previously held any type of license; and

(b) Submit satisfactory evidence of an eye examination indicating:

1. 20/40 corrected vision in both eyes; or

2. If one (1) eye is blind, at least 20/30 corrected vision in the other eye.

### Section 5. Additional Licensing Requirements for Specific Licenses.

(1) Veterinary personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by:

1. Evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky; and

2. A "Veterinarian Approval Form", KHRC 3-020-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a "Veterinarian Approval Form", KHRC 3-020-4 signed by a licensed veterinarian certifying that the applicant works for him or her as required by KRS 321.443.

(d) Equine therapist. An application from an equine therapist not defined by KRS Chapter 321 shall be accompanied by a "Veterinarian Approval Form", KHRC 3-020-4 signed by a licensed veterinarian and the chief state veterinarian attesting to the skill and integrity of the applicant.

(2) Farriers. An application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a farrier course or examination recognized by the American Farrier's Association, or submit a letter of recommendation from a licensed farrier.

(3) Standardbred Licensees. (a) A standardbred owner, trainer, owner/trainer, driver, driver/trainer, owner/trainer/driver, or owner/driver shall have a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky.

(b) Any standardbred horse under lease shall race in the name of the lessee and a copy of the lease shall be filed with the clerk of the course. A standardbred horse shall not race under lease without an eligibility certificate issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in the name of the lessee. Both the lessee and lessor shall be licensed by the commission prior to post.

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(c) If any licensed standardbred trainer is absent from a racing meet for more than six (6) days, the trainer shall appoint and have properly licensed a new trainer of record.

(4) Special event licenses.

(a) A special event license shall be:

1. Issued to employees who are employed by an association only for the duration of a special event; and
2. Valid for the days of the event only.

(b) The duration of the license shall not exceed three (3) calendar days.

### Section 6. Licensing Fees.

(1) The following annual fees shall accompany the application and shall not be refundable.

(a) Association Employee: \$25

(b) Assistant trainer: \$150

(c) Claiming: \$150

(d) Dental technician: \$100

(e) Driver: \$125

(f) Driver/trainer: \$125

(g) Equine therapist: \$50

(h) Exercise rider: \$10

(i) Farm manager or agent: \$50

(j) Farrier: \$100

(k) Farrier apprentice: \$50

(l) Jockey: \$150

(m) Jockey agent: \$150

(n) Jockey apprentice: \$100

(o) Matinee driver: \$125

(p) Mutuel employee: \$50

(q) Owner

1. For thoroughbreds: \$150

2. For standardbreds: \$125

3. For other horses: \$35

(r) Owner (temporary)

1. For thoroughbreds: \$150

2. For standardbreds: \$125

3. For other horses: \$35

(s) Owner/assistant trainer;

1. For thoroughbreds: \$150

2. For standardbreds: \$125

3. For other horses: \$35

(t) Owner/trainer;

1. For thoroughbreds: \$150

2. For standardbreds: \$125

3. For other horses: \$35

(u) Owner/trainer/driver: \$125

(v) Owner/driver: \$125

(w) Racing department employee: \$100

(x) Racing official: \$100

(y) Special event employee: \$10

(z) Stable employee:

1. For thoroughbreds: \$10

2. For standardbreds: \$5

3. For other horses: \$5

(aa) Steeplechase jockey: \$150

(bb) Trainer

1. For thoroughbreds: \$150

2. For standardbreds: \$125

3. For other horses: \$35

(cc) Vendor: \$50

(dd) Vendor employee: \$25

(ee) Veterinarian

1. For thoroughbreds: \$150

2. For standardbreds: \$125

3. For other horses: \$35

(ff) Veterinary assistant: \$50

(gg) Veterinary technologist or technician: \$50

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

### Section 7. Fingerprinting.

(1) If requested by the commission, a license applicant shall furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license.

(2) If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints.

(3) The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

### Section 8. Multi-state/National Licenses.

(1) In lieu of the commission license application form, an applicant may submit an ARCI Multi-Jurisdiction Racing License Owner's Application or the National Racing License Application or Renewal Application.

(2) The commission shall accept a multi-state or national license if it complies with licensing requirements in this administrative regulation and KRS Chapter 230.

Section 9. Consent to Investigate by License Applicants and Licensees. After an applicant files a license application, the commission may:

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

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

(3) Verify information provided by the applicant.

Section 10. Search and Seizure. (1) The commission or designee may search any location described in KRS 230.260(7).

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

(3) A licensee shall:

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

(b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.

(4) A licensee shall consent to out-of-competition testing in accordance with 810 KAR 8:040.

### Section 11. Employer Responsibility.

(1) (a) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation.

(b) If an employer violates subsection (a), the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230 or Title 810 KAR.

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

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

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

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

### Section 12. Financial Responsibility.

(1) A licensee shall maintain financial responsibility during the period for which the license is issued.

(2) A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of any occupation for which a license is required by this administrative regulation shall constitute a failure to meet the financial responsibility requirements of KRS 230.310.

(3) If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment.

(4) An applicant for a license may be required to submit evidence of financial responsibility to the commission if a judgment has been rendered against him or her.

#### Section 13. Voluntary Withdrawal of License Application.

(1) A license applicant may with the approval of the license review committee voluntarily withdraw his or her license application from the license review process.

(2) If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

(3) The stewards or judges shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the Association of Racing Commissioners International.

#### Section 14. License Review Committee.

(1) The executive director, chief racing steward, presiding judge, or director of licensing may refer a license application to the license review committee in lieu of denying the application.

(2) The license review committee shall be composed of the executive director or designee, the director of licensing or designee, the chief state steward or presiding judge or their designee, and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.

(3) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(4) The denial of the application may be appealed in accordance with KRS Chapter 13B.

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

#### Section 15. License Denial, Revocation, or Suspension.

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

(a) The public interest, for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering, may be adversely affected if the license is issued;

(b) The licensee or applicant has any felony or misdemeanor criminal conviction from any jurisdiction, including having entered into any form of diversionary program, within fifteen (15) years preceding the date of submission of a license application;

(c) The licensee or applicant has pending criminal charges or is criminally charged during the license period in any jurisdiction;

(d) The licensee or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked;

(e) The licensee or applicant has had a license issued by the Commonwealth revoked, suspended, or denied;

(f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;

(h) The licensee or applicant has been ejected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to

violate a statute, administrative regulation, or similar rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the pre-arrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the stewards or judges;

(l) The licensee or applicant has demonstrated financial irresponsibility as described by Section 12 of this administrative regulation;

(m) The licensee or applicant has knowingly failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of a thoroughbred;

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

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

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

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

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

(t) The licensee or applicant has violated any of the alcohol or substance abuse provisions in KRS Chapter 230 or 810 KAR 2:030;

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

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

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

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

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

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

3. Fighting;

4. Assaults;

5. Offensive and profane language;

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

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

8. Disturbing the peace;

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

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

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

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

Kentucky sired;

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

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

(ee) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 17 of this administrative regulation;

(ff) The licensee or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;

(gg) The licensee or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;

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

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

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

1. A hypodermic needle, hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 810 KAR 8:010, Section 3(5); or

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

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

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

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

#### Section. 16. Reciprocity.

(1) If a person's license has been denied, suspended, or revoked in another jurisdiction, the commission may require reinstatement of the license in that jurisdiction before a license is granted by the commission.

(2) If a person has been ruled off, excluded, or ejected from a racetrack in Kentucky or in another jurisdiction, the commission may require reinstatement of the person at that track before a license is granted by the commission.

#### Section. 17. Changes in Application Information.

(1) The licensee or applicant shall report changes in any information required for licensing in writing to the commission.

(2) Any change in information required for licensing shall be submitted in writing upon the "Change in Application Information Form", KHRC 3-020-3, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change, unless it is information listed in subsection (3) of this section.

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

(a) Criminal charges;

(b) Criminal convictions;

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

(d) License revocations or fines of \$500 or more in other jurisdictions;

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

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

#### Section 18. Temporary Licenses.

(1) (a) Only an owner is eligible for a temporary license.

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Temporary Owner's License Application", KHRC 3-020-2, on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, Social Security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the 30th day pending completion of all licensing procedures.

(f) Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If a temporary license expires prior to the completion of all owner licensing procedures, the applicant shall pay an additional licensing fee.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

(3) A temporary license shall not be valid for claiming.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except if prohibited by this administrative regulation due to a potential conflict of interest.

#### Section 20. Conflict of Interest.

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

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

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

(a) Racing official;

(b) Assistant starter;

(c) Practicing veterinarian for any horse other than the owner's;

(d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;

(e) Officer or managing employee;

(f) Track maintenance supervisor or employee;

(g) Outrider;

(h) Race track security employee;

(i) Farrier;

(j) Photo finish operator;

(k) Horsemen's bookkeeper;

(l) Racing chemist;

(m) Testing laboratory employee;

(n) Jockey;

(o) Apprentice jockey; or

(p) Jockey agent.

#### Section 21. License Photo Identification Badges.

(1) (a) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge).

(b) A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

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

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

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

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards or judges, the commission director of enforcement, or director of licensing, or designee, upon request.

#### Section 22. Duties of Licensees.

(1) A licensee shall be knowledgeable of this administrative regulation and, by acceptance of the license, agrees to abide by this administrative regulation.

(2) A licensee shall report to track security or the stewards or judges any knowledge the licensee has that a violation of this administrative regulation has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the stewards or judges and the commission, and all decisions by the stewards or judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the stewards or judges may be appealed to the commission, except those made by the stewards or judges as to:

(a) Findings of fact as occurred during and incident to the running of a race; and

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

(5) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.

(6) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of the administrative regulations of the commission, or any wrongdoings by any person, and shall cooperate in any subsequent investigation.

Section 23. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

#### Section 24. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Licensing Application", KHRC 3-020-1;

(b) "Temporary Owner's License Application", KHRC 3-020-2;

(c) "Change in Application Information Form", KHRC 3-020-3;

(d) "Veterinarian Approval Form", KHRC 3-020-4; and

(e) "Rule 17, Sections 1 through 10", United States Trotting Association, 2009/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B,

Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures by which individuals participating in horse racing are licensed by the Commission, and by which licenses are denied, suspended, or revoked.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the integrity of horse racing in Kentucky by requiring the licensing of all individuals participating in horse racing at locations under the jurisdiction of the Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.310 requires all individual participants to be licensed by the Commission. This administrative regulation establishes licensing procedures to implement the statutory mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the Commission to properly regulate the licensing of individual participants in racing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: The Commission is affected by this administrative regulation, and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Individual participants in horse racing

will be required to obtain a license and pay a license fee to participate in racing in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): License fees vary according to the category of the license. The maximum fee is \$150.00, and the license is issued on an annual basis. These fees are not amended by this regulation and have not been altered since 2010.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in horse racing will benefit from the enhanced integrity to racing which is ensured by proper licensing of individuals who engage in racing at locations under the jurisdiction of the Commission.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission will be impacted by this administrative regulation, as will all individuals licensed by the Commission to participate in horse racing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 3:030. Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370, 230.380

STATUTORY AUTHORITY: KRS 230.215, 230.260(3), 230.300, 230.370, 230.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) and 230.380 vest the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth.

#### Section 1. Definitions.

(1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in 810 KAR 3:001, Section 1(26).

(4) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five (5) percent or more of stock or financial interest in the collective organization; and;

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(6) "Substantial change in ownership" is defined by 810 KAR 3:001, Section 1(39).

(7) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices, that accepts and processes the cashing of wagers, calculates the odds and prices of such wagers, and records, displays, and stores pari-mutuel wagering information.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association or simulcast facility.

#### Section 2. License Required.

(1) Any totalizator company that provides totalizator services to



a racing association or simulcast facility located in the Commonwealth shall be licensed by the commission.

(2) To obtain a license, an applicant shall apply to the commission for a license on the "Initial/Renewal License Application to Provide Totalizator Services, KHRC 3-030-1 (9/18).

(a) An initial license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(b) A license to provide totalizator services shall be renewed annually on or before August 1 of the preceding year. The commission shall render a decision on the renewal application on or before December 20. If approved, a renewal license shall be effective January 1.

(3) If an applicant is unable, despite best efforts, to provide all of the required information, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

#### Section 3. Licensing Fees and Costs.

(1) An annual license fee of \$1,000 shall be payable to the commission upon submission of a license application. A license application shall not be complete until receipt of the license fee each year.

(2) (a) The applicant shall pay all costs incurred by the commission in reviewing an application for an initial or renewal license, including:

1. Legal and investigative costs, and

2. The cost of performing background checks on any individual or organization associated with the applicant.

(b) To cover these costs, initial applicants shall submit with the application an investigation fee of \$10,000.

(c) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application.

(d) If the commission determines that investigation of a renewal applicant or an applicant that is proposing to undergo a substantial change in ownership is necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit the payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(e) To the extent additional costs become necessary to investigate an applicant for a license or a substantial change in ownership of an applicant, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(f) The commission may waive the investigation fees, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

#### Section 4. License Application Procedures.

(1) The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application.

(2) In addition to the "Initial/Renewal License Application to Provide Totalizator Services, KHRC 3-030-1 (9/18), an applicant shall provide to the commission:

(a) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;

(b) A Service and Organization Controls 1 Report (SOC-1) or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the

commission, be conducted annually in order to receive a renewal license;

(c) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(d) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards, KHRC 3-030-03 (9/18);

(e) An agreement to testing of hardware and software as may be directed by the commission; and

(2) In reviewing an application, the commission may consider

(a) Any information, data, reports, findings, or other factors available that it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(b) The integrity of the applicant and its principals, including whether the applicant has:

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;

5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky;

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto;

7. Been a party to litigation over business practices or disciplinary actions over a business license;

8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

9. Failed to satisfy judgments, orders, or decrees; and

10. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes:

(c) The quality of physical facilities and equipment;

(d) The management ability of the applicant and its principals;

(e) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations; and

(f) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth.

#### Section 5. License Applicant Presentation.

(1) An applicant that has submitted a completed license application and all accompanying fees may request or be required to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

(2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant's suitability. The admission of supplemental information shall be subject to the discretion of the commission.

Section 6. Additional Information. The commission may request additional information from an applicant that would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations.

(1) Before doing business in Kentucky, the licensee shall be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable administrative regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards, KHRC 3-030-03 (9/18).

Section 8. Change in Ownership.

(1) A change in ownership shall be reported to the commission on the Totalizator Serves Change of Control Form.

(2) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change is based.

(3) Notice of a change of ownership shall not be required for:

(a) A nominal change of ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in a licensee, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the licensee.

(4) Notice of a substantial change in ownership shall be filed with the commission prior to the execution of the documents upon which the proposed substantial change is based and shall constitute a request for approval of the change.

(a) Absent prior written approval from the commission, a substantial change in ownership shall result in termination of the license.

(b) Any attempt to effect substantial change in ownership not in writing shall be considered void by the commission.

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 3-030-1 (9/18);

(b) "Totalizator Change of Control Form," KHRC 3-030-2 (9/18); and

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 3-030-3 (9/18).

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

(3) This material may also be obtained at the commission's Web site, <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires totalizator companies that provide totalizator services to racing associations located in the Commonwealth to be licensed. It establishes application and licensing fees and sets forth the requirements for obtaining a license.

(b) The necessity of this administrative regulation: This new administrative regulation is being promulgated as part of a comprehensive revision of the Kentucky Horse Racing Commission's regulatory scheme. This regulation is intended to replace previous regulations concerning the same subject matter which are being concurrently repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.260 vests the commission with jurisdiction over any totalizator company that provides totalizator services to a racing association located in the Commonwealth and requires such totalizator company to be licensed by the commission. It further allows the commission to impose application and license fees on the totalizator companies and requires it to promulgate administrative regulations which establish conditions and procedures for the licensing of totalizator companies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes application and licensing fees, as well as the conditions and procedures for the licensing of totalizator companies.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: There are three major totalizator companies that could be affected by this administrative regulation. At the present time, all three of those companies are doing business in Kentucky. If any other chooses to do business in the Commonwealth, it will have to comply with the regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will have to pay the application fee to apply for a license and the licensing fee to receive a license. They will have to provide the

documentation required by the license application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The totalizator companies will have to pay an application fee of \$10,000 to apply for a license. Any portion of this money not expended during the review of the license will be refunded. If the cost of reviewing the license application exceeds \$10,000, the totalizator company will be assessed those additional costs. If the company is granted a license, it will be assessed a \$1,000 license fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Licensed totalizator companies will be benefit from having their duties and regulatory guidelines clearly defined.

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

(a) Initially: The total initial cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(b) On a continuing basis: The total ongoing costs would be expected to be minimal since regulating simulcast facilities would be included with the costs of regulating all pari-mutuel wagering in the Commonwealth.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The licensee will also be required to reimburse the commission pursuant to KRS 230.260 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation requires the imposition of application and license fees. Since these license fees are currently in place, there is no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not increase any current fees to participate. This administrative regulation replaces an existing regulation that has the same fee structure.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.260.

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? Since there are three (3) licensed totalizator companies in the Commonwealth, and all three (3) have paid their initial license fees, the Commonwealth is expected to generate \$3,000.00 annually from the license fees, plus any payroll taxes imposed upon all participants for employees located in the Commonwealth.

(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? Since there are three (3) licensed totalizator companies in the Commonwealth, and all three (3) have paid their initial license

fees, the Commonwealth is expected to generate \$3,000.00 annually from the license fees, plus any payroll taxes imposed upon all participants for employees located in the Commonwealth.

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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 (+/-): Increase - No specific estimate

Expenditures (+/-): No impact

Other Explanation: There are currently three companies in this industry that have historically paid the licensing fees, but additional companies could enter the market.

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 3:040. Advance deposit account wagering.**

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(2), 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

#### Section 1. Definitions.

(1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership,

limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 810 KAR 3:001, Section 1(26).

(11) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(12) "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five (5) percent or more of stock or financial interest in the collective organization; and;

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(13) "Substantial change in ownership" is defined by 810 KAR 3:010, Section 1(39).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" means the system, including hardware, software, communications equipment, and electronic devices, that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

## Section 2. License Required to Conduct Advance Deposit Account Wagering.

(1) Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(20), that offers advance deposit account wagering to Kentucky residents shall be licensed by the commission.

(2) To obtain a license, an applicant shall apply to the commission for a license on the Initial/Renal License Application to Conduct Advance Deposit Account Wager, Form KHRC 3-030-01.

(3) An initial license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(4) A license to conduct advance deposit account wagering shall be renewed annually on or before September 1 of the preceding year, except as provided in Section 7 of this administrative regulation. The commission shall render a decision on the renewal application on or before December 15 of the preceding year. If approved, a renewal license shall be effective January 1.

(5) If an applicant is unable, despite best efforts, to provide all of the required information, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

## Section 3. Licensing Fees and Costs.

(1) An annual license fee of \$1,000 shall be payable to the commission upon submission of a license application. A license application shall not be complete until receipt of the license fee each year.

(2)(a) The applicant shall pay all costs incurred by the commission in reviewing an application for an initial or renewal license, including

1. Legal and investigative costs, and

2. The cost of performing background checks on any individual or organization associated with the applicant.

(b) To cover these costs, initial applicants shall submit with the application an investigation fee of \$5,000.

(c) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application.

(d) If the commission determines that investigation of a renewal applicant or an applicant that is proposing to undergo a substantial change in ownership is necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit the payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(e) To the extent additional costs become necessary to investigate an applicant for a license or a substantial change in ownership of an applicant, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(f) The commission may waive the investigation fees, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

## Section 4. License Application Procedures.

(1) The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application.

(2) In addition to the complete application, an applicant shall provide to the commission:

(a) Audited financial statements for the last three (3) years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts;

(b) A detailed plan of how the advance deposit account wagering system will operate; and

(c) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request.

(3) The commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be subsequent material changes in the plan of operations unless ordered by the commission or until approved by the commission after receiving a written request.

(4) The commission may require a report to be conducted in accordance with the Service and Organization Controls 1 Report (SOC-1), or a replacement report approved by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that the report be conducted within the twelve (12) months before issuing an initial license and annually in order to receive a renewal license; and

(5) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

(a) The integrity of the applicant and its principals, including:

1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;

3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and

5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;

(b) The quality of physical facilities and equipment;

(c) The financial ability of the applicant to conduct advance deposit account wagering;

(d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be comingled with other funds as required in Section 8(13) of this administrative regulation;

(e) The management ability of the applicant and its principals;

(f) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations;

(g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;

(h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and

(i) The economic impact of the applicant upon the Commonwealth.

#### Section 5. License Applicant Presentation.

(1) An applicant that has submitted a completed license application and all accompanying fees may request or be required to make a presentation of its application at a meeting of the commission prior to the ruling on the application.

(2) The presentation shall be limited to information contained in the application and any supplemental information relevant to the applicant's suitability. The admission of supplemental information shall be subject to the discretion of the commission.

Section 6. Additional Information. The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including:

(1) Copies of any documents used by the applicant in preparing the application; and

(2) A list of all contracts between the applicant and third parties related to operations. The commission may review the contracts any time upon request.

#### Section 7. Duration of License.

(1) An initial license issued under this administrative regulation before July 1 shall be valid for the calendar year for which it is issued.

(2) An initial license issued under this administrative regulation on or after July 1 shall be valid for the calendar year for which it is issued and the following calendar year.

#### Section 8. Operations and Duties of Licensees.

(1) Before doing business in Kentucky, the licensee shall be qualified to do business in Kentucky.

(2) The licensee shall notify the commission of any communication, report, or investigation conducted or to be conducted by the Thoroughbred Racing Association, Thoroughbred Racing Protective Bureau, United States Trotting Association, American Quarter Horse Association, Arabian Jockey Club, National Thoroughbred Racing Association, or any state or federal regulatory agency that relates to the safety, integrity, or security of the licensee and its participants, or that would reasonably be deemed to affect public confidence in the licensee. The licensee shall further send a copy of any such communication, correspondence, or report to the commission within 24 hours of receipt by the licensee. This regulation shall not be construed to include information delivered to licensee officials acting in the capacity of members of the board of directors of the above referenced organizations.

(3) In addition to the information the commission may request under this or any other applicable administrative regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with any local, state, or federal regulatory agency.

(4) The licensee shall notify the KHRC within 24 hours of becoming aware of any suspected or confirmed breach of security

of data, including intrusions into the personal information of account holders.

(5) The licensee shall notify the KHRC within 24 hours of becoming aware of a wagering anomaly. The licensee shall provide transactional data to the KHRC upon request. Wagering anomalies include any incident that might reasonably affect the public's confidence in the wagering pools, such as:

(a) Account wagering fraud;

(b) Suspected manipulation through computerized robotic wagering;

(c) Odds manipulation

(d) Quick pick or random pick malfunction;

(e) Cancellation of large wagers, especially within 2 minutes of the closing of a wagering pool;

(f) Suspicious wagering patterns; and

(g) Totalizator or data communications malfunctions.

(6) All notices required to be given to the commission pursuant to Sections 2 through 5 of this administrative regulation shall be provided by phone call to the executive director or the director of pari-mutuel wagering and compliance immediately after the event triggering the notice requirement. In addition, written notice of the event shall be submitted to the executive director and the director of pari-mutuel wagering and compliance no later than twenty-four (24) hours after the event triggering the notice requirement. Written notice may be made by hand delivery, electronic mail, or facsimile. All notices other than those in Sections 1 through 3 shall be provided to the director of pari-mutuel wagering and compliance within five (5) business days of the event unless otherwise specifically instructed in these regulations.

(7) The licensee shall submit to the director of pari-mutuel wagering and compliance or his or her designee an electronic copy of the Advanced Deposit Wagering Excise Tax Report (Kentucky Form 73A102) no later than the first business day of the week next succeeding the week during which the wagers forming the base of the tax were received.

(8) A licensee shall submit to the commission a separate report for each affiliate under the control of the licensee on the form "Kentucky Horse Racing Commission Quarterly ADW Activity Report," KHRC 3-040-04, that includes the following information:

(a) For account holders residing in Kentucky:

1. The total amount wagered on races conducted by all Kentucky associations; and

2. The total amount wagered on races conducted by all non-Kentucky associations.

(b) For account holders not residing in Kentucky, the total amount wagered on races conducted by each Kentucky association.

(9) The Kentucky Horse Racing Commission Quarterly ADW Activity Report shall be submitted to the commission according to the following schedule:

(a) For wagering from January 1 through and including March 31, the report shall be submitted no later than the first business day following March 14 of the same calendar year;

(b) For wagering from April 1 through and including June 30, the report shall be submitted no later than the first business day following July 14 of the same calendar year;

(c) For wagering from July 1 through and including September 30, the report shall be submitted no later than the first business day following October 14 of the same calendar year; and

(d) For wagering from October 1 through and including December 31, the report shall be submitted no later than the first business day following January 14 of the next calendar year.

(10) On or prior to the third Friday of September of each year, the licensee shall submit to the commission the form "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax Summary Report" certifying the average daily account total for all account holders residing in Kentucky between the first Monday of March of that calendar year and the last Sunday of August of the same calendar year.

(11) On or prior to the third Friday of September of each year, the licensee shall submit to the commission the form "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax Summary Report," KHRC 3-040-05, certifying the

average weekly excise tax amount paid to the Commonwealth of Kentucky between the first Monday of March of that calendar year and the last Sunday of August of the same calendar year.

(12) A licensee shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the licensee offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(13) A licensee shall not commingle account funds with other funds.

(14) A licensee that does not have audited financial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

(15) A licensee shall use and communicate pari-mutuel wagers to a totalizator system licensed by the commission.

(16) The licensee shall require its licensed totalizator company to provide all wagering data requested by the KHRC or its designee with respect to any website, affiliate, or any other such entity related to the licensee through which the licensee facilitates wagers by Kentucky account holders or by any account holder who is not a Kentucky resident and who is wagering on Kentucky races.

(17) A licensee shall operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(18) All personnel processing wagers made by Kentucky residents shall be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual shall be licensed in Kentucky.

(19) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(20) Each account holder shall provide personal information as the licensee and the commission require.

(a) Required information shall include:

1. Name;
2. Principal residence address;
3. Telephone number;
4. Social Security number;
5. Date of birth; and
- 6 Other information necessary for account administration.

(b) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(21) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(22) An employee or agent of the licensee shall not disclose any confidential information except:

- (a) To the commission;
- (b) To the account holder as required by this administrative regulation;
- (c) To the licensee and its affiliates;
- (d) To the licensed association as required by the agreement between the licensee and the association; and
- (e) As otherwise required by law.

(23) The licensee shall provide each account holder a copy of account holder policies and procedures related to pari-mutuel wagering, including the licensee's refund policy, and other information and materials that are pertinent to the operation of the account. This information shall be available on the licensee's official website and shall be viewable without registering for an account with the licensee.

(24) The licensee shall publish a list of racing associations that

have authorized the licensee to participate in their wagering pools. This list shall be viewable without registering for an account with the licensee.

(25) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(26) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

- (a) Placing of wagers;
- (b) Deposits to accounts;
- (c) Credits to accounts;
- (d) Debits to accounts;
- (e) Refunds to accounts;
- (f) Withdrawals from accounts;
- (g) Minimum deposit requirements;
- (h) Fees per wager; and
- (i) Rebates.

(27) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(28) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(29) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(30) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of the communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(31) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizator system.

(32) A licensee shall not accept wagers if its recording system is not operable.

(33) The licensee shall synchronize its timing system with the U.S. Naval Observatory Clock or an alternative time synchronization methods approved by the commission at least once every twenty-four (24) hour period.

(34) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(35) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, if it returns to the account holder all monies then on deposit within seven (7) calendar days.

#### Section 9. Surety Bond or Letter of Credit Required.

(1) Prior to commencement of advance deposit account wagering operations, a licensee shall secure an irrevocable bond from a surety company admitted to the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky. A certified copy of the bond shall be submitted to the commission and shall be accompanied by a certified copy of the "Advance Deposit Wagering Provider Surety Bond or Letter of Credit Form," KHRC 3-040-03.

(2) The bond or letter of credit amount shall be 125% of the amount reported in Part II plus 400% of the amount report in Part III of the form "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax Summary Report," KHRC 3-040-05 unless any of the following conditions apply:



(a) If the licensee was not licensed for operation in the Commonwealth of Kentucky prior to January 1 of the current calendar year, the bond or letter of credit amount shall be \$50,000.00;

(b) If the sum of the amounts equaling 125% of the amount reported in Part II plus 400% of the amount report in Part III of the form "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax Summary Report," KHRC 3-040-05, is less than or equal to \$50,000, the bond or letter of credit amount shall be \$50,000; or

(c) If the sum of the amounts equaling 125% of the amount reported in Part II plus 400% of the amount report in Part III of the form "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax Summary Report," KHRC 3-040-05, exceeds \$500,000, the bond or letter of credit amount shall be \$500,000.

(3) The bond or letter of credit shall, if necessary, be used to:

(a) Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;

(b) Discharge the licensee's financial obligations to account holders who are Kentucky residents;

(c) Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

(d) Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

#### Section 10. Change in Ownership.

(1) A change in ownership shall be reported to the commission on the Advance Deposit Wagering Change of Control Form, KHRC 3-040-02.

(2) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change is based.

(3) Notice of a change of ownership shall not be required for:

(a) A nominal change of ownership if the licensee is a publicly traded corporation;

(b) The transfer of an ownership interest in a licensee, direct or indirect, whether substantial or nominal, if by a publicly traded corporation and the beneficial ownership is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the licensee.

(4) Notice of a substantial change in ownership shall be filed with the commission prior to the execution of the documents upon which the proposed substantial change is based and shall constitute a request for approval of the change.

(a) Absent prior written approval from the commission, a substantial change in ownership shall result in termination of the license.

(b) Any attempt to effect substantial change in ownership not in writing shall be considered void by the commission.

Section 11. Unlicensed Activity. With respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take the measures it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

#### Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering", KHRC 3-040-1;

(b) "Advance Deposit Account Wagering Change of Control Form", KHRC 3-040-2;

(c) "Advance Deposit Wagering Provider Surety Bond or Letter of Credit Form", KHRC 3-040-3;

(d) "Kentucky Horse Racing Commission Quarterly ADW Activity Report", KHRC 3-040-4; and

(e) "Kentucky Horse Racing Commission ADW Player Account

Balance and Excise Tax Summary Report", KHRC 3-040-5.

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

(3) This material may also be obtained at the commission's Web site, <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures for entities that offer advance deposit account wagering on horse races to Kentucky residents.

(b) The necessity of this administrative regulation: This new administrative regulation is being promulgated as part of a comprehensive revision of the Kentucky Horse Racing Commission's regulatory scheme. This regulation is intended to replace previous regulations concerning the same subject matter which are being concurrently repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes the process, fees, procedures, and criteria for granting/denying association applications as authorized by KRS 230.260. Jurisdiction and authority to promulgate such regulation is set forth in KRS 230.260.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is a new regulation that prescribes procedures, fees, requirements, and criteria when granting or denying an application to offer advance deposit account wagering to Kentucky residents.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: Entities that offer advance deposit account wagering to Kentucky residents are affected. Racing associations and horsemen are also affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities seeking to offer advance deposit account wagering to Kentucky residents will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicants will be required to pay an initial license fee of \$5,000 and an annual licensing fee of \$1000. The applicants will also be responsible for paying the cost of any necessary background checks. Licensees will be required to secure a bond or letter of credit of up to and a Statement on Standards for Attestation Engagements, Number 16, report may have to be submitted.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be greater transparency regarding the monies wagered through advance deposit account wagering companies. Race tracks and horsemen will benefit from contribution to purse accounts. The regulation also provides some protections for account holders.

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

(a) Initially: The total initial cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(b) On a continuing basis: The total ongoing cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(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 licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: An initial license fee of \$5,000 is required to cover all initial regulatory costs and for background checks. An annual license fee of \$1000 is established to cover the regulatory costs.

(9) TIERING: Is tiering applied? Tiering is applied to determine the amount of a licensee's required surety bond or letter of credit. This is dependent on the average amount of money held by the licensee Kentucky account holders over a six-month period and the average excise tax paid by the licensee over a six-month period. The excise tax paid depends on the amount of wagering activity conducted by patrons utilizing the services of a licensee.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.215, 230.260, 230.310, and 230.370.

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. No estimated change in expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3). 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? Although specific dollar estimates cannot be determined, participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3). Based on the previous fiscal year and the projected growth of advance deposit wagering, it is expected that approximately \$1.15 million in excise taxes will be collected, in addition to payroll taxes imposed upon all employees of licensees in the Commonwealth.

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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. This administrative regulation provides eligibility requirements for accessing the backside improvement fund. As licensed thoroughbred racing associations continue to access the funds, individuals identified in the Regulatory Impact Analysis and Tiering Statement will receive increase in revenue.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 3:050. Simulcast facilities.

RELATES TO: KRS 230.377(1), 230.380

STATUTORY AUTHORITY: KRS 230.300(1), 230.380(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300(1) and 230.380(1) require the commission to establish criteria for the application and licensure of simulcast facilities through administrative regulation. This administrative regulation establishes the criteria for application and licensure of simulcast facilities.

Section 1. Definitions. (1) "Applicant" means:

(a) A licensed track; or

(b) An entity established, and wholly owned, by licensed tracks that have entered in a joint agreement to establish or operate a simulcast facility;

(2) "Host track" is defined by KRS 230.210(15);

(3) "Track" is defined by KRS 230.210(10).

Section 2. License Application.

(1) Prior to commission approval of an application to establish a simulcast facility, an applicant shall submit the information required by the provisions of this section to the commission.

(2) An applicant shall submit the following information in writing:

(a) The name of the applicant;

(b) If the applicant is an entity defined by Section 1(1)(b) of this administrative regulation:

1. The name of the entity;
2. A copy of the organizational documents;
3. A copy of the joint agreement;
4. The location of the principal office; and
5. The names of the officers and directors;
- (c) The name of the county and city in which the applicant intends to locate the simulcast facility.
- (3) (a) The location of any licensed track located within any radius specified in subparagraphs 1 and 2 of this paragraph:
  1. Within fifty (50) miles of any county line of the county in which the simulcast facility will be located;
  2. Greater than fifty (50) miles, but less than seventy-five (75) miles, of any county line of the county in which the simulcast facility will be located;
- (b) The location of any licensed track located within any radius specified in subparagraphs 1 and 2 of this paragraph:
  1. Within fifty (50) miles of the city limits of the city in which the simulcast facility will be located;
  2. Greater than fifty (50) miles, but less than seventy-five (75) miles, of the city limits of the city in which the simulcast facility will be located.
- (4) The commission may request, in writing, information necessary to determine the financial soundness of the applicant.
- (5) After the commission has transmitted the notice required by KRS 230.380(1), it shall:
  - (a) Approve or reject an application; and
  - (b) Inform the applicant, in writing, of:
    1. Its decision; and
    2. The reasons for its decision.
- (6) If the commission approves an application, it shall inform, in writing, the applicant that he may establish the simulcast facility if, within sixty (60) days, the local governing body of the jurisdiction in which the simulcast facility is to be located does not exercise its right to reject the facility as provided by the provisions of KRS 230.380(2).
- (7) After receipt of commission approval of an application, at least twenty (20) days prior to wagers being accepted at the simulcast facility, an applicant shall file the following information with the commission:
  - (a) The schedule of race meets to be simulcast;
  - (b) The complete address of the simulcast facility;
  - (c) The telephone number of the simulcast facility;
  - (d) A description of simulcast facility, including:
    1. Its total capacity;
    2. The seating capacity, excluding dining;
    3. The capacity of the dining area;
    4. The number of washrooms;
    5. Parking, including:
      - a. Its location; and
      - b. The distance to the simulcast facility;
  - (e) The name, address, and home telephone number of the on-site manager of the simulcast facility;
  - (f) The name and address of the owner of the real property at which the simulcast facility will be located;
  - (g) If there is a business enterprise occupying the real property at which the simulcast facility is located, its:
    1. Name;
    2. Address;
    3. Type of business; and
    4. Owner;
  - (h) The name of the supplier of:
    1. Concessions;
    2. Food; and
    3. Alcohol;
  - (i) The authority for the sale of alcohol;
  - (j) The name of the totalizator service and mutuel manager;
  - (k) 1. Name of, location, and distance to, the nearest other licensed track; and
    2. Written consent of a licensed track that is located within a radius that is more than fifty (50) miles, but less than seventy-five (75) miles, from the simulcast facility, if this has not already been provided;
  - (l) The location of, and distance to, the nearest lottery vendor; and

- (m) A statement that the applicant has complied with applicable fire, safety, building, and health codes.
  - (8) (a) If information submitted to the commission, or required to be submitted to the commission by the provisions of this administrative regulation, changes, an applicant shall immediately inform the commission in writing of the change;
  - (b) The change shall be reviewed by the commission to determine whether the applicant has complied with the provisions of applicable statutes and this administrative regulation.
  - (9) The commission may refuse to approve an application, and may suspend or revoke a license to establish a simulcast facility on the following grounds:
    - (a) Failure to comply with the provisions of KRS Chapter 230 and this administrative regulation or any other applicable statute or administrative regulation;
    - (b) Denial, suspension, or revocation of a license in another racing jurisdiction;
    - (c) Falsification, misrepresentation, or willful omission of information in an application or with regard to matters pertaining to racing;
    - (d) Failure to comply with an order or ruling of the commission or its representatives;
    - (e) Ownership of an interest in, or participation in any manner in, an illegal enterprise, such as bookmaking, touting, bet solicitation, pool-selling;
    - (f) Association with a person engaged in an illegal activity;
    - (g) Unqualified by experience or confidence to perform the activity permitted by the license;
    - (h) Intoxication, profanity, fighting, or other conduct of a disorderly nature on simulcast facility property;
    - (i) Employment or harboring of persons who are not licensed as required by applicable statute or administrative regulation;
    - (j) Possession on simulcast facility property of firearms without written permission, or not in compliance with applicable statute and administrative regulation;
    - (k) Use of profane, abusive, or insulting language to the commission or its staff;
    - (l) Offering, promising, giving, accepting or soliciting a bribe, directly or indirectly, to or by a person having a connection with the outcome of a race;
    - (m) Failure to report knowledge of items specified in paragraph (l) of this subsection;
    - (n) Addiction to controlled substances or alcohol;
    - (o) Prior conviction of a crime, subject to the provisions of KRS 335B.010 and 335B.020; and
    - (p) Substantiation that an applicant does not possess good moral character.
  - (10) The commission shall:
    - (a) Review the information submitted to it by the applicant, pursuant to subsection (7) of this section;
    - (b) Determine whether it meets the requirements of KRS Chapter 230 and this administrative regulation; and
    - (c) If it determines that the applicant has not met the requirements of KRS Chapter 230 and this administrative regulation, inform the applicant:
      1. Of its determination;
      2. Of the reasons for its determination.
- Section 3. Renewal. An application to renew a license for a simulcast facility shall be filed no later than November 1 in the year preceding the calendar year for which renewal is requested and shall include all information required by Section 1(1) through (10) of this administrative regulation.
- Section 4. General Requirements.
- (1) A simulcast facility shall:
    - (a) Be kept in an excellent state of repair;
    - (b) Be operated to ensure that the image of racing and pari-mutuel wagering is enhanced; and
    - (c) Provide adequate security for the public to assure the perception and fact of an honest enterprise free of corrupt practices.
  - (2) All interstate wagering shall be received only through a host track licensed by the commission.

(3) A malfunction of the totalizer shall be immediately reported to:

- (a) The host track; and
- (b) The commission.

(4) Action needed to correct the mutual pools at a simulcast facility shall be calculated by the mutual manager of the host track.

(5) Pools shall be limited to the host track's pools and all payoffs shall be consistent with the common pools of the host track.

(6) A simulcast facility shall meet local and state fire and life safety codes at all times.

(7) A simulcast facility shall report to the commission:

- (a) An accident that results in injury; and
- (b) A crime committed on the property of the facility.

(8) Food and dining services shall be of good quality, so as to promote the image of racing and that of a quality establishment.

(9) Proper smoke ventilation shall be provided to ensure adequate fresh air for designated smoking sections.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the regulatory framework that applies to simulcast facilities. This regulation establishes licensing requirements for simulcast facilities, establishes business agreements that must be in place for the issuance of a simulcast facility license, and establishes physical requirements for simulcast facilities.

(b) The necessity of this administrative regulation: This new administrative regulation is being promulgated as part of a comprehensive revision of the Kentucky Horse Racing Commission's regulatory scheme. This regulation is intended to replace previous regulations concerning the same subject matter which are being concurrently repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.380 grants the commission the authority to promulgate administrative regulations as it deems necessary to protect the integrity of pari-mutuel wagering at any simulcast facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering

thereon shall be conducted in the Commonwealth. This regulation assists the commission by providing a uniform framework for the issuance of licenses for simulcast facilities 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: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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 the seven currently-licensed racing associations in the Commonwealth, any applicant for a simulcast facility license, all licensed participants in racing in the Commonwealth, all patrons who place pari-mutuel wagers on live horse races conducted in the Commonwealth, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any facility applying for a simulcast facility license will be required to submit an application as prescribed in the regulation. Additionally, by statute, a simulcast facility will be required to have contractual agreements with any of the seven currently licensed racing associations within the distance radius prescribed by KRS 230.380. Any simulcast facility granted a license will be required to comply with the general provisions prescribed by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If a racing association or individual requests and receives a license for a simulcast facility, that association or individual will incur the costs of constructing or renovating a facility and acquiring the equipment used to conduct pari-mutuel wagering. The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses. There will be no additional costs to owners, trainers, jockeys, or patrons placing pari-mutuel wagers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's seven licensed racetracks, applicants for a license to conduct simulcasting, and all individuals who participate in wagering will benefit from having the duties and regulatory guidelines of simulcasting facilities clearly defined.

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

(a) Initially: The total initial cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(b) On a continuing basis: The total ongoing costs would be expected to be minimal since regulating simulcast facilities would be included with the costs of regulating all pari-mutuel wagering in the Commonwealth.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(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 licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased

regulatory costs relating to compensation of additional personnel and other expenses. Since these license fees are currently in place, there is no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.361 and 230.380.

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? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net revenue generated from this administrative regulation

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net revenue generated from this administrative regulation

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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. This administrative regulation provides eligibility requirements for accessing the backside improvement fund. As licensed thoroughbred racing associations continue to access the funds, individuals identified in the Regulatory Impact Analysis and Tiering Statement will receive increase in revenue.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 4:001. Definitions.**

RELATES TO: 810 KAR Chapter 4

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall

be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 4.

#### Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and which is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Also eligible" means in flat racing an eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline.

(5) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward or judge or official of a meeting.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default incident to KAR Title 810.

(7) "Association" is defined by KRS 230.210(1).

(8) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(9) "Calendar days" means consecutive days counted irrespective of number of racing days.

(10) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811 KAR 4:050.

(11) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(12) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(13) "Commission" means:

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

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(14) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(15) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(16) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(17) "Declaration" means in flat racing the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR 4:030.

(18) "Directive" means an official order issued by the commission or the executive director.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money;

(g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards, judges,

or the commission revising the order of finish of a race.

(21) "Draw" means the process of determining post positions by lot.

(22) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(23) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(24) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(25) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards, judges, or the commission.

(26) "Foul" means any action by any jockey or driver that tends to hinder another jockey or any horse in the proper running of the race.

(27) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(28) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(29) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(30) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(31) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(32) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(33) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(34) "Maiden" means in flat racing a horse which has never won a race at a recognized meeting in any country.

(35) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(36) "Month" means calendar month.

(37) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(38) "Nominator" means the person in whose name a horse is entered for a stakes race.

(39) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(40) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(41) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(42) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(43) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.

(44) "Post" means the starting point of a race.

(45) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(46) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(47) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

(48) "Purse" means the gross cash portion of the prize for which a race is run.

(49) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(50) "Race" means a running contest between horses,, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

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

(52) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(53) "Recognized meeting" means any meeting with regularly scheduled live horse races, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, and conducted with the applicable breed registry.

(54) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(55) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(56) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(57) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(58) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(59) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(60) "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race, with the fees to be included in the purse.

(61) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse

(62) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(63) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(64) "Subscription" means nomination or entry of a horse in a stakes race.

(65) "Suspended" means withdrawal of racing privileges by the stewards or commission.

(66) "Thoroughbred racing" is defined by KRS 230.210(3).

(67) "Tote" or "tote board" means the totalizator.

(68) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(69) "Walkover" means a race in which the only starter or all starters represent single ownership.

(70) "Weigh in" means in flat racing the presentation of a jockey to the clerk of scales for weighing after a race.

(71) "Weigh out" means in flat racing the presentation of a jockey to the clerk of scales for weighing prior to a race.



FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 4.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 4 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 4.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's licensed race tracks and all individual licensed participants in horse racing are potentially affected by this administrative regulation's establishment of definitions pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed racing associations and individual participants in horse racing will be required to adhere to the requirements and rules set forth in the regulations in Title 810 KAR pertaining to horse racing. This administrative regulation defines terms that appear in 810 KAR Chapter 3.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.260.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 4:010. Horses.**

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

Section 1. Definition. "Electronic registration system" means a software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

**Section 2. Registration and Identification Required.**

(1) A horse shall not be entered or raced in this state unless:

(a) The horse is duly registered, as applicable, in The Jockey Club breed registry, the American Quarter Horse Association, the Appaloosa Horse Club, the Arabian Horse Association Registry, or the American Paint Horse Association, or their respective successors; and

(b) 1. The registration certificate, virtual certificate, or racing permit issued by the applicable breed registry for the horse is on file with the racing secretary; or

2. The information contained on the registration certificate, virtual certificate, or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may at any time require presentation of a horse's registration certificate, virtual certificate, or racing permit or other proof of ownership.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner, and any virtual certificate shall be transferred to the new owner electronically. The new owner shall report the change in ownership to the stewards.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate or racing permit prior to a horse being entered or raced in Kentucky.

**Section 3. Ringers Prohibited.**

(1) A horse shall not be entered or raced in this state designated by a name other than the name under which the horse is currently registered with the applicable breed registry. If a horse's name is changed with the applicable breed registry, and the horse has raced under its previous name, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse that he owns or is in his care to a racing official or member of the regular news media.

(3) A horse shall not race in this state unless identified by:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau, or by the comparable authorized organization applicable to the breed of the horse;

(b) An electronic horse identification microchip that accurately identifies the horse and is compliant with the international standards ISO 11784; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in this state if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

**Section 4. Denerving.**

(1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

(a) The neurectomy has been reported by the trainer to the stewards; and

(b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.

(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual certificate, racing permit, and entry in the electronic registration system shall fall:

(a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denerved horse if the neurectomy was performed at a location under the commission's jurisdiction; and

(b) Solely on the owner of the denerved horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours after the race requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office.

**Section 5. Health Certificate Required.**

(1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission unless a Certificate of Veterinary Inspection is issued by an accredited veterinarian:

(a) Not more than ten (10) days prior to the horse's arrival on the grounds; or

(b) Within a lesser interval as prescribed by the racing association in consultation with the State Department of Agriculture.

(2) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

**Section 7. Thoroughbred Age Restrictions.**

(1) A maiden six (6) years of age or older that has made five (5) life time starts on the flat shall not be entered or start.

(2) A first time starter four (4) years of age or older shall be approved by a commission veterinarian prior to entry.

**Section 8. Other Age Restrictions. A quarterhorse, paint horse,**

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Arabian, or Appaloosa horse six (6) years of age or older shall not be entered or raced in a race restricted to maidens. A horse thirteen (13) years of age or older shall not be entered or raced.

### Section 9. Fillies and Mares Bred.

(1) A filly or mare that has been covered by a stallion:

(a) Shall be so reported to the racing secretary prior to being entered in a race; and

(b) Shall not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's or mare's registration certificate, or otherwise provided to the stewards, indicating that the stallion service fee has been paid or satisfied.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare in-foal shall not be entered in a race 120 days or more after the date of last cover.

Section 10. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list in any racing jurisdiction;

(3) Has previously raced, but has made no starts in the last 365 days or more, unless approved by a commission veterinarian prior to entry.

(3) Is suspended in any jurisdiction;

(4) Has been administered any drug in violation of 810 KAR 8:010;

(5) Is blind or has seriously impaired vision in both eyes;

(6) Is not correctly identified to the satisfaction of the stewards; or

(7) Is owned wholly or in part by or is trained by an ineligible person.

### Section 11. Equipment.

(1) Riding crops and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse from its previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle shall not weigh more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) Bar shoes may be used for racing only with permission of the stewards.

(8) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that may be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)(a) Any riding crop may be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;

2. Maximum length, including flap, of thirty (30) inches; and

3. Minimum diameter of the shaft of three-eighths (3/8) inch.

(d)1. The only additional feature that may be attached to the riding crop is a flap that shall have a:

a. Maximum length from the end of the shaft of one-half (1/2) inch; and

b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)(a) The following shall not be used on the front shoes of horses while racing or training on any racing surface:

1. Horse shoes that have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of horses while racing or training.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission shall be prohibited.

Section 12. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and to the appropriate breed registry applicable to the horse. The alteration shall be noted on the horse's registration certificate, racing permit, virtual certificate, or entry in the electronic system.

Section 13. Reporting Death of Horse. A licensed racing association or training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian.

Section 14. Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission. If a postmortem examination is conducted:

(1) All shoes and equipment on the horse's legs shall be left on the horse;

(2) The commission, through its designee:

(a) Shall take possession of the horse upon death;

(b) Shall, if commission personnel are present, collect and submit for analysis blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs; and

(c) Shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements.

(3) The remains of the horse shall not be returned after completion of the postmortem examination.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of 810 KAR 8:010.

### Section 15. Incorporation by Reference.

(1) "ISO 11784", 1996/Amd.1:2004, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning horses in thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning the health and safety of horses in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to the health and safety of horses in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning the health and safety of horses in thoroughbred and other flat racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers, veterinarians, and jockeys, will be

required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the health and safety of horses in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules concerning the health and safety of horses that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 4:020. Weights.**

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. This administrative regulation provides the requirements for assigning weights to a horse in a race.

**Section 1. Weight Assignments for Horses.**

(1) Weight allowance shall be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the weight allowance to which it is entitled at the time of starting, regardless of its allowance at time of entry.

(3) Weight penalties shall be mandatory. A horse incurring a weight penalty for a race shall not be entitled to any weight allowance for that race. A horse not entitled to the first weight allowance in a race condition shall not be entitled to any subsequent allowance specified in the race conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify the horse, unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.

(5) A horse shall not incur a weight penalty or be barred from any race for having been placed second or lower in any race. A horse shall not be given a weight allowance for failure to finish second or lower in any race.

(6)(a) Except as provided in paragraph (b) of this subsection, a horse shall not receive weight allowance and shall not be relieved of extra weight for having been beaten in one (1) or more races.

(b) A horse may receive weight allowances if it has not won a race within a specified period or a race of a specified value as set forth in the race conditions.

(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(8) In determining eligibility, allowances, and penalties, the reports, records, and statistics as recorded in racing publications shall be considered official, but may be corrected by the publisher up to forty-five (45) minutes prior to post time of the race.

(9) A maiden winning at an unrecognized meeting shall lose the maiden condition. All other horses winning at unrecognized meetings shall not be considered winners for weight allowance or eligibility in races run thereafter under the jurisdiction of the commission.

(10) A thoroughbred horse shall not be assigned a weight of less than 118 pounds, unless:

(a) Apprentice allowance is claimed;

(b) The horse is assigned a weight of less than 118 pounds in a handicap race by the racing secretary;

(c) The horse is a three (3) year old entered to run in a race against horses four (4) years old and older from January 1st through September 1st, in which case the horse shall not be assigned a weight less than 116 pounds; or

(d) The filly and mare weight allowance in subsection (11) applies.

(11) Except in handicaps, thoroughbred fillies two (2) years old shall be allowed three (3) pounds, and thoroughbred fillies and mares three (3) years old and older shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in a race that includes horses of the opposite sex.

(12) Thoroughbred and Arabian minimum scale weights shall be 120 pounds for two (2)-year-olds, 122 pounds for three (3)-year-olds, and 124 pounds for four (4)-year-olds and older.

(13) Quarter Horse, Appaloosa, and Paint Horse minimum scale weights shall be 122 pounds for two (2)-year-olds, 124 pounds for three (3)-year-olds, and 126 pounds for four (4)-year-

olds and older.

(14) Five (5) pounds shall be the limit of overweight any horse is permitted to carry.

**Section 2. Jockey Weight Procedures and Requirements.**

(1) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes before post time. Only valets furnished by the association shall assist a jockey in weighing out.

(2) A jockey's weight shall include:

(a) Clothing;

(b) Boots;

(c) Saddle and its attachments; and

(d) Any other equipment except as specified in this subsection.

(3) A jockey's weight shall not include:

(a) Riding crop;

(b) Bridle;

(c) Bit;

(d) Reins;

(e) Safety helmet;

(f) Safety vest;

(g) Blinkers;

(h) Goggles;

(i) Over-girth;

(j) Breast collar; and

(k) Number cloth.

(3) After a race has been run, the jockey shall ride promptly to the finish line, dismount, and present himself to the clerk of scales to be weighed in. The jockey shall carry to the clerk of scales all pieces of equipment with which he or she weighed out. The post-race weighing of a jockey shall include any sweat, dirt, and mud that have accumulated on the jockey, jockey's clothing, jockey's safety helmet, jockey's safety vest, and over-girth.

(4) Each jockey shall weigh in at no less than the weight at which he or she weighed out. If short, the stewards shall investigate and if warranted take disciplinary action against the individual or individuals responsible for the violation, including disqualification of the horse from receiving what would otherwise be its share of the purse.

(5) If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his mount, the jockey may walk or be carried to the scales, or the jockey may be excused by the stewards from weighing in.

(6) A notice shall be included in the daily program that:

(a) Each jockey shall carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests not included in required weighing out procedures; and

(b) Upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative



regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes weight requirements and procedures for jockeys and horses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning the weights requirements and procedures for horses and jockeys in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation establishes the rules pertaining to weight requirements and procedures for jockeys and horses in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning the weight requirements and procedures for jockeys and horses in thoroughbred and other flat racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and jockeys, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the running of the race in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to all similarly situated entities in an equal manner.

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 Kentucky Horse Racing Commission 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 230.215(2) and 230.260(8).

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? This administrative regulation will not generate revenue for state or local government.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 4:030. Entries, subscriptions, and declarations.**

RELATES TO: KRS 230.215, 230.240, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260(8) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of horses in order to race.



## VOLUME 45, NUMBER 6 – DECEMBER 1, 2018

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

### Section 3. Procedure for Making Entries.

(1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to 810 KAR 2:030.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered as reflected by its registration certificate, racing permit, or virtual certificate.

(a) A horse shall not race unless registered pursuant to 810 KAR 4:010 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 8:030 for incorrect identification.

(5) The entry shall indicate usage of furosemide pursuant to 810 KAR 8:010.

(6) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(7) A horse shall not be entered in two (2) races to be run on the same day.

(8)(a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) workouts, one (1) of which is from the starting gate, one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(c) A workout not appearing in the official program shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutuel windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

(9) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be listed as also-eligible and be considered only if the race is taken off the turf.

### Section 4. Limitation as to Spouses.

(1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at the time of the entry except as provided in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

### Section 5. Mutuel Entries.

(1) More than two (2) horses having common ties through training shall not be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, shall be joined as a mutuel entry and single betting interest, except as provided in subsection (5) of this section.

(3) More than two (2) horses having common ties through ownership shall not be joined as a mutuel entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse, a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any stakes race with added money of \$50,000 or more, the racing secretary may uncouple mutuel entries of horses sharing common ties through training or ownership or both.

### Section 6. Subscriptions.

(1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of the stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

### Section 7. Closings.

(1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

### Section 8. Number of Starters in a Race.

(1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion

of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as provided in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

#### Section 9. Split or Divided Races.

(1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the conditions established in this subsection.

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, sex, or both.

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

#### Section 10. Post Positions.

(1) Post positions for all races shall be determined by lot, except as described in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) The racing secretary shall assign program numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

#### Section 11. Also-Eligible List.

(1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present

day that has been drawn into the body of a race on the succeeding race day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes and handicaps.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

#### Section 12. Preferred List.

(1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting, a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on the succeeding race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

#### Section 14. Declarations.

(1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

#### Section 15. Scratches.

(1) Scratches shall be irrevocable and shall be permitted under the conditions established in this section.

(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four (4) hours prior to post time for the race by obtaining approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or

2. The scratch is related to adverse track conditions or change of racing surface.

(c) A horse shall not be scratched from a purse race unless:

1. The approval of the stewards has been obtained; and

2. Intention to scratch has been filed in writing with the racing secretary or his assistant at or before scratch time.

(2) A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may be permitted to scratch horses without physical excuses at scratch time, down to a minimum of eight (8) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(5) Each association shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4) of this section. Records and statistics kept pursuant to this section shall be

retained by the licensed racing association for one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for entries, subscriptions and declarations in thoroughbred and other flat racing. These rules provide an orderly means of determining which horses will be considered eligible to enter a race.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific requirements and methods for entries, subscriptions and declarations in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to entries, subscriptions and declarations in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning entries, subscriptions and declarations in thoroughbred and other flat racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to entries, subscriptions and declarations in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 4:040. Running of the race.**

RELATES TO: KRS 230.215(2), 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation sets forth the standards and requirements governing the running of a horse race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. No race shall start after 11:55 p.m.

Section 2. Horses in Paddock Not to be Touched. Only the following persons may touch a horse while in the paddock:

- (1) Licensed owner;
- (2) Licensed trainer;
- (3) Authorized stable personnel;
- (4) Paddock judge;
- (5) Horse identifier;
- (6) Assigned valet;
- (7) Steward;
- (8) Farrier; or
- (9) Outrider.

Section 3. Trainer Responsibility. The trainer shall be responsible for:

- (1) Arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered;
- (2) Supervising the saddling of each horse entered; and
- (3) Providing his or her assistant trainer or another licensed trainer to serve as a substitute if absent from a track where the trainer's horses are participating in races.

Section 4. Withdrawal of a Horse. A horse whose starting is mandatory shall run the course, except that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse, or horses owned by only one (1) stable, will be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time.

- (1) All horses shall parade and carry their declared weight from

the paddock to the starting post. The parade shall pass the stewards' stand. After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post. With the permission of the stewards, a horse may be excused from parading with the other horses.

(2) The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay.

(3) If a jockey is thrown on the way to the post:

(a) The jockey shall remount at the point at which thrown; or

(b) If the jockey is so injured as to require a substitute jockey, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. A horse may be led to the post by a lead pony. Lead ponies may be excluded from the paddock or walking ring, at the discretion of the stewards.

Section 8. Control of Horses and Jockeys by Starter. Horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started.

(1) The starter may grant a delay if an injury occurs to any jockey or if a jockey's equipment malfunctions. During the delay, the stewards may require all jockeys to dismount.

(2) The starter shall unload the horses in the gate when instructed by the stewards if:

(a) A horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate; and

(b) The horse is not immediately taken in hand by the outrider and brought back for reloading.

(3) The starter shall reload the horses in their proper order upon order of the stewards.

(4) The starter shall report all causes of delay to the stewards.

(5) A person other than the jockey, starter, or assistant starter shall not strike a horse or attempt, by shouting or other means, to assist the horse in getting a start.

Section 9. Starting Gate. Races on the flat shall use a starting gate approved by the commission unless exempted by the stewards. Exempted races shall not start until the assistant starter has dropped the flag in answer to the starter.

Section 10. Horses Left at Post.

(1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse has inadvertently not been loaded in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall:

(a) Immediately post the "inquiry" sign;

(b) Advise the public to hold all pari-mutuel tickets; and

(c) Determine, after consulting with the starter and viewing the patrol films or video tapes, whether the horse was precluded from obtaining a fair start.

(2) If the stewards determine that the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets on the horse, unless the horse ruled a nonstarter is part of a mutuel entry and another horse in the entry is not left at the post, in which case there shall not be a pari-mutuel refund.

(3) Stakes fees for a ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his or her discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the post, there shall not be a refund of pari-mutuel wagers on the horse nor refund of stakes fees paid for the horse.

Section 11. Horses Failing to Finish. Any horse that starts in a race but does not cross the finish line or is not ridden across the

finish line by the jockey with whom it starts the race shall be declared unplaced and shall receive no portion of the purse money.

Section 12. Fouls. A leading horse if clear is entitled to any part of the track. If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul. If a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards a foul alters the finish of a race, an offending horse may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. A jockey shall make his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding that results in a foul, irrespective of whether an objection is lodged. If in the opinion of the stewards a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out. Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse. If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Riding Crops.

(1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

(2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.

(3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards pursuant to 810 KAR 4:010, Section 11 shall not be possessed by anyone, or applied by anyone to a horse at any time at a location under the jurisdiction of the racing commission.

(4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year.

(5) A riding crop shall only be used for safety, correction and encouragement.

(6) A rider who uses a riding crop shall:

(a) Show the horse the riding crop and give the horse time to respond before striking the horse;

(b) Having used the riding crop, give the horse a chance to respond before using it again; and

(c) Use the riding crop in rhythm with the horse's stride.

(7) A riding crop shall not be used to strike a horse:

(a) On the head, flanks or on any other part of its body other than the shoulders or hind quarters except if necessary to control a horse;

(b) During the post parade or after the finish of the race except if necessary to control the horse;

(c) Excessively or brutally;

(d) Causing welts or breaks in the skin;

(e) If the horse is clearly out of the race or has obtained its maximum placing; and

(f) Persistently even though the horse is showing no response

under the riding crop.

(8) A riding crop shall not be used to strike another person.

(9) After the race, a horse may be subject to inspection by a racing official or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

(10) The giving of instructions by any licensee that if obeyed would lead to a violation of this section may result in disciplinary action also being taken against the licensee who gave the instructions.

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance, other than a riding crop, shall not be used to affect the speed of a horse in a race or workout. A sponge or other object shall not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment shall be approved by the stewards.

Section 17. Official Order of Finish as to Pari-mutuel Payoff. When satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and administrative regulations of the commission, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall set aside or alter the official order of finish for the purposes of pari-mutuel wagering.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning the running of the race in thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning the running of the race in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions

relating to the running of the race in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning the running of the race in thoroughbred and other flat racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and jockeys, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the running of the race in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 810 KAR 4:050. Claiming races.

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes conditions for claiming races.

Section 1. (1) In claiming races a horse shall be subject to claim for its entered price by a licensed owner in good standing, or by the holder of a claiming license. The procedure for obtaining a claiming license shall be as follows:

(a) An applicant shall, fifteen (15) days prior to entering a claim, submit:

1. An application for owners' original license;

2. A financial statement;

3. To a background check, if requested by the commission;

4. The name of a licensed trainer, or person eligible to be licensed as a trainer, who will assume care and responsibility for the horse claimed; and

5. The requisite fee for a claiming license.

(b) The claiming license shall be valid for the remainder of the calendar year.

(2) (a) A claim may be made by an authorized agent.

(b) An agent may claim only for the account of those for whom he is licensed as agent.

(c) The name of the authorized agent and the name of the owner for whom the claim is being made shall appear on the claim slip.

(3) (a) A person shall not claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account.



(b) A claimed horse shall not remain in the same stable or under the care or management of the owner or trainer from whom it is claimed.

(4) (a) A person shall not claim more than three (3) horses from a race.

(b) Multiple claims submitted by the same authorized agent and/or trainer for a single horse shall not be permitted and shall be void.

(5) (a) A claimed horse shall not run for thirty (30) days after being claimed in a race in which the determining eligibility price is less than twenty-five (25) percent more than the price for which the horse was claimed.

(b) The day following the day the horse is claimed shall be the first day for purposes of the thirty (30) day period;

(c) The claimed horse shall be entitled to enter whenever necessary to permit it to start on the 31st calendar day following the claim.

(d) This subsection shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper, and starter allowance races.

(6) (a) A horse claimed in a claiming race shall not be sold or transferred, wholly or in part, within thirty (30) days after the day it was claimed, except in another claiming race.

(b) Unless the stewards grant permission for a claimed horse to enter and start at an overlapping or conflicting meeting in Kentucky, a horse shall not race elsewhere until the close of entries of the meeting at which it was claimed.

(7) (a) A claim shall be:

1. Made on commission "Claim Blank";
2. Sealed in an envelope supplied by the commission; and
3. Deposited in the association's claim box.

(b) The "Claim Blank" form and envelope shall be filled out completely and accurately.

(8) (a) Claims shall be deposited in the claim box at least fifteen (15) minutes before post time of the race from which the claim is being made.

(b) Money or its equivalent shall not be put in the claim box.

(c) A claim shall be valid if the claimant at the time of filing the claim has a credit balance in his account with the horseman's bookkeeper of not less than the amount of the claim, plus the Kentucky sales tax.

(9) The stewards, or their designated representative, shall:

(a) Open the claim envelopes for each race as soon as the horses leave the paddock en route to the post; and

(b) Check with the horseman's bookkeeper to ascertain whether the proper credit balance has been established with the association.

(10) If more than one (1) valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the stewards or their designated representative.

(11) (a) After the race has been run a horse that has been claimed shall be delivered to the claimant.

(b) The claimant shall present written authorization for the claim from the racing secretary.

(c) After written authorization has been presented, horses that are sent to the detention area for post race testing shall be delivered.

(d) Other horses shall be delivered in the paddock.

(e) A person shall not refuse to deliver a horse claimed out of a claiming race to the person legally entitled to the horse.

(f) If the owner of a horse that has been claimed refuses to deliver the horse to the claimant, the horse shall be disqualified from further racing until delivery is made.

(12) (a) A claim shall be irrevocable.

(b) Title to a claimed horse shall be vested in the successful claimant from the time the horse is a starter; and the funds shall be transferred to the account of the previous owner, with said funds immediately available for future claiming transactions.

(c) The stewards shall void the claim and return the horse to the original owner if:

1. The horse suffers a fatality during the running of the race or dies or is euthanized before leaving the track; or
2. The commission veterinarian determines the horse will be

placed on the Veterinarian's List as bled, unsound, or lame before the horse is released to the successful claimant.

(c) The stewards shall not void the claim if, prior to the race in which the horse is claimed, the claimant indicates on the claim blank that he or she elects to claim the horse regardless of whether the commission veterinarian determines the horse will be placed on the Veterinarian's List as bled, unsound, or lame.

(d) A claimed horse shall run in the interest of and for the account of the owner from whom it is claimed.

(13) (a) A person shall not:

1. Enter or offer to enter into an agreement to claim or not to claim; or

2. Attempt or offer to attempt to prevent another person from claiming any horse in a claiming race.

(b) A person shall not attempt by intimidation to prevent anyone from running a horse in a claiming race.

(c) An owner or trainer shall not make an agreement with another owner or trainer for the protection of each other's horse in a claiming race.

(14)(a) A claim that does not comply with the provisions of this administrative regulation shall be void.

(b) The stewards shall be the judges of the validity of a claim.

(15) A person holding a lien of any kind against a horse entered in a claiming race shall record the lien with the racing secretary or horseman's bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be presumed that none exists.

(16) The engagements of a claimed horse pass automatically with the horse to the claimant.

(17) Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

(18) (a) A claimed horse not otherwise selected by the stewards for post-race testing shall be subjected to post-race testing in blood for the presence of substances regulated by 810 KAR Chapter 8. The results of the test shall be reported to the chief state steward.

(b) If a test is positive for a substance associated with a Class A, B, or C penalty or for a TCO2 violation, 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 and of all expenses incurred after the date of the claim.

(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.

## Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Claim Blank (Rev 96)"; and
- (b) Claim Blank envelope.

(2) This material may be inspected at Kentucky Horse Racing Commission, 4063 Iron Works Pike, Building B, Lexington Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning claiming races in thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning claiming races in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to claiming races in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning claiming races in thoroughbred and other flat racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and jockeys, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to claiming races in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial cost to implement this

administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 4:060. Objections and complaints.

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which racing is conducted in Kentucky. This administrative regulation establishes the requirements and

procedures for lodging objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints.

(1) Except as provided by subsection (2) of this section, an objection or complaint against a horse or jockey entered in a race shall be received only if lodged:

(a) In accordance with Sections 2 and 3 of this administrative regulation; and

(b) By the owner or authorized agent of the owner, the trainer, or the jockey of another horse engaged in the same race and whose horse suffered or may suffer by the alleged violation of an administrative regulation.

(2) An inquiry may also be made by a racing official.

Section 2. Procedures for Objections and Complaints.

(1) An objection as to interference or a foul occurring during the running of the race shall be lodged with the stewards orally or by telephone. All other objections or complaints shall be made in writing and be signed by the complainant.

(2) An objection or complaint lodged during a race meeting shall be addressed to the stewards. An objection or complaint lodged after the termination of a race meeting shall be addressed to the commission at the commission's general office.

(3) An objection or complaint once lodged shall not be withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints.

(1) Except as provided by subsection (2) of this section, an objection or complaint based on one (1) of the following violations of KAR Title 810 shall be lodged by an aggrieved person within the time prescribed:

(a) At least one (1) hour before post time of the race, if the objection or complaint is based on incorrect weight allowance claimed for a horse entered to race;

(b) Before the race has been posted as official on the infield results board, if the objection or complaint is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race;

(c) Not later than one (1) year from the date the race was run, if the objection or complaint is based on fraudulent or willful misstatement in an entry under which a horse has run;

(d) Not later than forty-eight (48) hours after post time of the race, if the objection or complaint involves the claim of a horse or a violation of 810 KAR 4:010, Section 4; and

(e) Within one (1) week after post time of the race, if the objection or complaint is based on any other violation of KAR Title 810.

(2) A steward may declare a horse ineligible or disqualified at any time.

Section 4. Final Determination of Objections to Acts in Race.

(1) The stewards shall:

(a) Make all findings of fact as to all matters occurring during and incident to the running of a race;

(b) Determine all objections and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and

(c) Determine the extent of disqualification, if any, of horses in a race for a foul committed during the race.

(2) Findings of fact and determination shall be final and shall not be subject to appeal.

(3) In determining the extent of disqualification, the stewards shall consider the seriousness and circumstances of the incident and may:

(a) Disqualify and place the offending horse, and any horses coupled with it as an entry, behind any horse that may have suffered by reason of the foul;

(b) Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;

(c) Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;

(d) Declare void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(e) Affirm the placing judges' order of finish and suspend the jockey if, in the stewards' opinion, the foul riding had no effect on the order of finish; or

(f) Disqualify the offending horse and not suspend the jockey if, in the stewards' opinion, the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. If the result of a race is placed in dispute by the lodging of an objection or complaint or by discovery of an alleged violation of an administrative regulation after the race has been declared official for pari-mutuel payoff, the procedures established in this section shall apply pending final determination of the disputed race.

(1) The purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute, except the stewards may order any portion of the purse money to be distributed if the distribution would not be affected by the determination of the dispute.

(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged violation of an administrative regulation which places the outcome of a race in dispute, the money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding the same.

(3) The horse that crossed the finish line first and any other horse that may become the winner of a disputed race shall be considered winners of that race until the matter is finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine an objection, complaint, or alleged violation of an administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling. If the stewards find that an administrative regulation was violated, the stewards may penalize the persons responsible, disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in the disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. If a horse is disqualified after a race has been declared official for pari-mutuel payoff and causes revision of the order of finish in the race:

(1) The pari-mutuel payoff shall not be affected in any way; and

(2) The stewards shall ensure that appropriate corrections are made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting the corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints Against Officials. A complaint or protest by a licensee based on a decision or act of a racing official other than the stewards, or concerning any matter that may occur on association grounds not provided for by Sections 4 and 5 of this administrative regulation, shall be made in writing, signed by the complainant, and submitted to the stewards. A complaint or protest by a person based on a decision, act, or conduct of the stewards shall be submitted to the commission as provided by 810 KAR 9:010.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning objections and complaints in thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning objections and complaints in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to objections and complaints in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning objections and complaints in thoroughbred and other flat racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and jockeys, will be required to adhere

to the requirements and rules set forth in this administrative regulation pertaining to objections and complaints in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 4:070. Jockeys and apprentices.**

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.260 (10), 230.260 (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and KRS 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260(10) authorizes the commission to promulgate administrative regulations establishing minimum fees for jockeys in the absence of a contract between an employing owner or trainer and a jockey. KRS 230.260(14) authorizes the commission to promulgate administrative regulations to establish safety standards and minimum fees for jockeys. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

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

- (1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;
- (2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;
- (3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;
- (4) The stewards determine that the person:
  - (a) Intends to become a licensed jockey;
  - (b) Possesses the physical ability to be a jockey; and
  - (c) Has demonstrated the ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and
- (5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 3:020, a holder of a license as a jockey or apprentice jockey:

- (1) Shall be sixteen (16) years of age or older and licensed under his or her legal name which shall be listed in the daily race program;
- (2) Shall have served at least one (1) year with a racing stable;
- (3) Shall have ridden in at least three (3) races; and
- (4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of the betting public, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey.

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

- (a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;
  - (b) Be granted an amateur jockey's license; and
  - (c) Have his amateur status duly noted on the daily race program.
- (2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance in Thoroughbred Racing.

(1) The provisions of this Section apply only to thoroughbred racing.

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

- (a) Ten (10) pounds until he or she has ridden five (5) winners;
- (b) Seven (7) pounds until he or she has ridden an additional thirty-five (35) winners;
- (c) If he or she has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he or she shall have an allowance of five (5) pounds until the end of that year; and
- (d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount, whichever occurs first.

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

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

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

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

(a) These contracts shall be:

1. Approved by the stewards;
2. Filed with the commission; and
3. Binding in all respects on the parties to the contract.

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

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

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

Section 5. Rider Contracts.

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

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

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

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

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

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

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

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

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

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

Section 7. Calls and Engagements.

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

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

Section 8. Jockey Fees in Thoroughbred Racing.

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

(a)

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to \$9,999	10% of Win Purse	5% of Place Purse OR \$75, whichever is greater	\$70	\$65	\$60
\$10,000-\$14,999	10% of Win Purse	5% of Place Purse	\$75	\$70	\$65
\$15,000-\$24,999	10% of Win Purse	5% of Place Purse	5% of Show Purse OR \$80, whichever is greater	\$75	\$70
\$25,000-\$49,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$85	\$80
\$50,000-\$99,000	10% of Win Purse	5% of Place Purse	5% of Show Purse	\$90	\$85
\$100,000 and up	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Place Purse	\$110

(b) The flat fee amounts as set out in paragraph (a) of this subsection are not percentage driven.

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

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

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

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

Section 9. Jockey Fees for Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing.

(1) The fee to a jockey in all races shall be, in the absence of special agreement, as follows:

(a)

Purse	Winning Mount	Second Place Mount	Third Place Mount	Fourth Place Mount	Losing Mount
Up to \$6,499	10% of Win Purse	Losing mt + \$15	Losing mt + \$10	Losing mt + \$5	\$75
\$6,500-\$9,999	10% of Win Purse	Losing mt + \$15	Losing mt + \$10	Losing mt + \$5	\$80
\$10,000-\$14,999	10% of Win Purse	5% of Place Purse	Losing mt + \$10	Losing mt + \$5	\$85
\$15,000-\$24,999	10% of Win Purse	5% of Place Purse	5% or (LM + \$10) whichever is greater	Losing mt + \$5	\$90
\$25,000-\$49,999	10% of Win Purse	5% of Place Purse	5% or (LM + \$10)	Losing mt + \$5	\$95
\$50,000-\$99,999	10% of Win Purse	5% of Place Purse	5% of Show Purse	Losing mt + \$5	100
\$100,000 and up	10% of Win Purse	5% of Place Purse	5% of Show Purse	5% of Fourth Place Purse	\$125

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

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

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

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

Section 10. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after a race has been declared official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be paid only a losing mount fee.

Section 11. Duty to Fulfill Engagements. Every rider shall fulfill his or her duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time. A rider shall not be required to ride a horse he or she believes to be unsound, nor over a racing strip he or she believes to be unsafe; however, if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 12. Presence in Jockey Room.

(1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride. Upon arrival each rider shall report his or her engagements to the clerk of scales. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he or she is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute



rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

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

(3) The association shall be responsible for security of the jockey room and for excluding all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, media representatives authorized by the stewards, and persons having special permission of the stewards to enter the jockey room.

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

#### Section 13. Weighing Out.

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

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

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

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

(4) Riding crops, blinkers, number cloths, bridles, bits, reins, over-girth, breast collar, goggles, safety helmets, and safety vests shall not be included in a rider's weight.

#### Section 14 Wagering.

(1) A rider shall not:

(a) Place a wager;

(b) Cause a wager to be placed on his behalf; or

(c) Accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding.

(2) The owner or trainer placing wagers for his or her rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

#### Section 15. Attire.

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

(2) Each jockey shall wear:

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

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet the standards set forth in subsections (4) and (5) of this section; and

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

(3) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

(4) A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his or her helmet has a tag, stamp, or similar identifying marker indicating

that it meets one of the following safety standards:

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

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

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

(5) A jockey mounted on a horse or stable pony at any location under the jurisdiction of the commission shall wear a safety vest at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his or her safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

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

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

(c) ASTM International Standard, ASTM F2681-08;

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

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

#### Section 16. Advertising.

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

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

2. The material advertises or promotes the Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

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

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

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

(d) Written approval by the following is submitted to the commission:

1. The managing owner of the horse, or authorized agent of the managing owner;

2. The jockey riding the horse or the authorized agent of the jockey;

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

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

(e) Written approval required pursuant to subsection (1)(d) of this section is evidenced by completion and return to the commission of the "Request to Wear Advertising and Promotional Materials" form, KHRC-4-070-1. The form shall be completed and submitted to the stewards not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. Other forms of approval shall not be accepted by the commission.

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

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

(b) Comply with the following size restrictions:

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

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

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

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

(4) Any party who fails to comply with this or any other provision provided in this administrative regulation may be subject to penalties by the commission in accordance with KRS Chapter 230 and Title 810 KAR.

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

(6) The sponsor of a licensed racing association race or race meeting may display advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

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

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

#### Section 17. Viewing Films or Tapes of Races.

(1) Every rider shall check the film list posted by the stewards in the jockey room the day after riding in a race.

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

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

#### Section 18. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Request to Wear Advertising and Promotional Material", KHRC 4-070-1.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax

(859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning jockeys and apprentices in thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning jockeys and apprentices in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to jockeys and apprentices in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning jockeys and apprentices in thoroughbred and other flat racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and jockeys, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to jockeys and apprentices in thoroughbred and other flat racing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded

from the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 4:080. Steeplechase racing.

RELATES TO: KRS 230.215, 230.361

STATUTORY AUTHORITY: KRS 230.215(2), 230.361(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation sets forth the standard under which steeplechase races shall be conducted when there is pari-mutuel wagering.

#### Section 1. Definitions.

(1) "Steeplechase race" means a contest between thoroughbred horses over a prescribed course which may include obstacles or jumps and is conducted at a racing association

licensed by the Kentucky Horse Racing Commission.

(2) "Recognized meeting" means any steeplechase race meeting with regularly scheduled races for thoroughbreds, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority recognized by The Jockey Club of New York.

Section 2. Unless otherwise provided for in this administrative regulation, all steeplechase races with pari-mutuel wagering shall be conducted in accordance with the provisions of KAR Title 810 pertaining to flat racing.

Section 3. For steeplechase races, "maiden" means a horse which, at the time of starting, has never won a race at a recognized meeting, except as follows:

(1) In flat racing, a horse shall be considered a maiden regardless of whether the horse has been the winner of a steeplechase race.

(2) In a steeplechase race, a horse shall be considered a maiden regardless of whether the horse has been the winner of a flat race.

Section 4. In steeplechase races, a horse shall be considered a "starter" immediately upon the starter dropping the flag.

Section 5. In steeplechase races, the "Scale of Weights for Age" in the "National Steeplechase Association Rules of Racing" shall apply.

Section 6. In steeplechase races, the provisions of 810 KAR 2:070, Section 35 shall not apply.

Section 7. In steeplechase races, the provisions of 810 KAR 4:010, Section 7 shall not apply.

Section 8. In steeplechase races, the provisions of 810 KAR 4:030, Section 3(8) shall not apply.

Section 9. In steeplechase races, except handicap races and stakes races, riders who have never ridden a winner are allowed ten (10) pounds. Non-winners of fifteen races are allowed five (5) pounds. Weight penalties shall be obligatory. Weight allowance shall be claimed at time of entry and shall not be waived after the posting of entries except by consent of the stewards.

#### Section 10. Incorporation by Reference.

(1) "Scale of Weights for Age", included in the National Steeplechase Association, Rules of Racing, 2014 edition, revised 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the rules and requirements for steeplechase races that are conducted at Kentucky racetracks under the jurisdiction of the Commission. This administrative regulation provides generally that steeplechase races will be conducted in accordance with the flat racing provisions of KAR Title 810, but the administrative regulation establishes certain exceptions to the application of the flat racing provisions. These exceptions establish alterations to the rules concerning age restrictions, allowances for apprentice riders, workouts, and the scale of weights.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide rules to govern the conduct of steeplechase races with pari-mutuel wagering thereon at locations under the jurisdiction of the Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.361 authorizes the Commission to issue a license to conduct pari-mutuel wagering on steeple chases or other races over jumps if all proceeds from the wagering, less expenses, are used for charitable purposes. These races are limited to four (4) days per year. This administrative regulation prescribes the conditions relating to the steeplechase races to be conducted as authorized by KRS 230.361.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that steeplechase races at racetracks under the jurisdiction of the Commission and as authorized by KRS 230.361 are conducted in an organized manner that is consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

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

(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 racetracks under the jurisdiction of the Commission, and all individual participants in steeplechase racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing, and this number is consistent from year to year.

Steeplechase races with pari-mutuel wagering thereon are rare, however, and only take place for a maximum four (4) days per year.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules for steeplechase races that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.361, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 4:090. Owners.**

RELATES TO: KRS 230.215, 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.310, 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which horse racing shall be conducted in Kentucky. KRS 230.310 requires any person who desires to participate in racing in Kentucky as an owner to apply to the commission for a license, and authorizes the commission to promulgate administrative regulations pertaining to licensing. KRS 230.320 authorizes the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. The function of this administrative regulation is to outline the requirements for owners to participate in horse racing in Kentucky.

Section 1. Owner's License Required. No horse may be entered or raced in this state unless the owner or each of the part owners, except as allowed in Section 4 of this administrative regulation, has been granted a current owner's license or temporary license by the commission.

Section 2. Owner's License Limitations.

(1) A licensed owner or trainer may personally serve as a farrier or jockey for horses he owns or are registered as in his care, provided he has received from the stewards a certification of the licensee's fitness as a competent farrier or jockey.

(2) A licensed owner:

(a) Shall own or have under lease a horse eligible to race, and be prepared to prove same upon call of the stewards.

(b) Shall not engage in an activity directly or indirectly involving the racing performance of horses owned by others.

(3)(a) Except as provided in paragraph (b), a licensed owner shall be at least eighteen (18) years old.

(b) The commission may grant an owner's license to a person less than eighteen (18) years of age who is a son or daughter of a licensed owner in this state, if the parent:

1. Holds an owner's license in this state; and

2. Files with the license application of the minor an agreement whereby the parent assumes responsibility for meeting all financial, contractual, or other obligations relating to racing of the applicant son or daughter

(4) The commission may deny, suspend, or revoke an owner's license for the spouse or any member of the immediate family or household of a person who is ineligible to hold an owner's license, unless there is a showing on the part of the applicant or licensed owner that his or her participation in racing as an owner shall in no way circumvent the intent of the administrative regulation by permitting a person, under the control or direction of a person ineligible for an owner's license, to serve in essence as a substitute for the ineligible person.

Section 3. Ownership Disclosure.

(1) Licensed owners and licensed trainers shall be jointly responsible for making a full disclosure of the entire ownership of each horse in their care.

(2) Disclosure under this section shall identify in writing all persons who directly, or indirectly through a lien, lease partnership, corporate stockholding, syndication, or other joint venture, hold any present or reversionary right, title, or interest in and to such horse, and those persons who by virtue of any form of interest may exercise control over or benefit from the racing of the horse. The degree and time of such ownership held by each person shall also

be designated.

(3) Disclosure under this section shall be made when registering each horse with the racing secretary upon arrival on association grounds or at time of entry whichever event occurs first and shall be revised immediately upon any subsequent change in the ownership.

(4) Disclosure under this section together with all written agreements, and affidavits setting out oral agreements, pertaining to the ownership of or rights to a horse, shall be filed with the stewards.

(5) All documents pertaining to the ownership or lease of a horse filed with the stewards shall be available for public inspection.

(6) The stewards may review the ownership of each horse entered to race. The stewards may determine the validity for racing purposes of all leases, transfers, and agreements pertaining to ownership of a horse and may call for adequate evidence of ownership at any time. The stewards may declare ineligible to race any horse, the ownership or control of which, is in question.

Section 4. Joint Ownership.

(1) No more than five (5) individual persons may be licensed as owners of a single horse.

(2) If more than five (5) individual persons own interests in a single horse, through a partnership, corporation, syndication, or other joint venture, then those individual persons shall designate a member of the partnership, corporation, syndicate, or joint venture to represent the entire ownership of and be responsible for the horse as the licensed owner.

(3) The commission may deny, suspend, or revoke the license of any owner whose ownership of a horse is qualified or limited in part by rights or interests in or to the horse being held or controlled by any other individual person or persons who would be ineligible to be licensed as an owner.

Section 5. Program Listing of Owners. Names of all persons licensed as owners of each horse shall be listed in the daily program. If space limitations preclude listing of first names, then at least two (2) initials shall precede surnames. Stable names, or corporate names, registered in other racing jurisdictions may be shown parenthetically if program space limitations permit. Lessees licensed as owners shall be designated on the program as lessees of each leased horse.

Section 6. Leases.

(1) A horse may be raced under lease with approval of the stewards, who may suspend or void approval at any time.

(2) No lease may be approved by the stewards for racing purposes unless:

(a) Lessee is licensed as an owner;

(b) Each of the signatures of the lessors and lessees on the lease agreement is subscribed and sworn to before a notary public;

(c) Term of the lease is no less than one (1) year, unless sooner terminated by claim or retirement of the horse;

(d) Conditions of the lease specify whether the horse can be entered in a race to be claimed. If agreeable to lessor that the horse may be entered in a claiming race, then the lease shall specify the minimum price for which the horse may be entered and the name of the payee of the claiming price;

(e) Conditions of the lease specify that upon claim of the horse, the lease shall terminate and all rights in and to the horse shall pass to claimant as a bona fide purchaser;

(f) After reviewing the full ownership of the leased horse, and the interests of all persons involved in the lease and the term and conditions of the lease, the stewards in their discretion find that the lease:

1. Completely divests lessors or sublessors of further control or direction of the racing performance of the horse while under lease; and

2. The resultant program listing of lessee would not mislead the betting public by reason of the absence in the program listing of the name of a person or persons possessing a beneficial interest in the leased horse.



Section 7. Thoroughbred Racing Colors.

(1) Thoroughbred owners shall be responsible for designing and providing individual racing colors, consisting of jackets and caps of distinctive color and pattern to be worn by jockeys during a race.

(2) The stewards may refuse to permit the use of racing colors that include advertising, or promotions, symbols or words, or which otherwise, in the opinion of the commission, are not in keeping with the traditions of the turf.

(3) No thoroughbred may be raced in racing colors other than those registered in the name of the horse's owner without special permission of the stewards. If an owner races two (2) or more horses in the same race, jackets shall be identical while caps may be varied in color or design.

(4) Owners and trainers shall be jointly responsible for the condition of racing colors, insuring that they are neat, clean, and in good repair, and that an adequate number of sets of racing colors are placed in the care of the clerk of scales.

(5) The clerk of scales and the valet serving a jockey shall be jointly responsible for having the correct jacket and cap on each rider when leaving the jockey room for the paddock.

Section 8. Authorized Agent.

(1) A licensed owner may, as a principal, authorize any person, as an agent, to act on the owner's behalf in all matters pertaining to racing in this state and ownership of horses on association grounds.

(2) A licensed owner shall be jointly liable and responsible with his licensed authorized agent for all acts and omissions of the authorized agent in a racing matter.

Section 9. Suspension. No horse owned wholly or in part by an owner whose license has been suspended shall be permitted to race during such suspension.

Section 10. Partnerships.

(1) Partnerships that own or control a present or reversionary interest in a horse to be raced shall register with the commission.

(2) Partnership papers shall be filed with an owner's license application and shall set forth the following:

(a) The name and address of every person having an interest in the horse involved;

(b) The relative proportion of the interests;

(c) To whom winnings are payable;

(d) In whose name the horse shall run;

(e) With whom the power of entry and declaration rests;

(f) The terms of any contingency, lease, or any other arrangement; and

(g) The names of the horses involved.

(3) All partnership registrations shall be signed by the principal partner or by his authorized agent.

(4) Any alteration in a recorded partnership shall be reported in writing to the commission and signed by all the partners, or their authorized agent.

(5) All the parties in a partnership and each of them shall be jointly and severally liable for all stakes, fees, and other obligations.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements and responsibilities imposed upon licensed horse owners who participate in racing in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the rules and requirements to participate as a horse owner in horse racing in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.310 authorizes the commission to promulgate administrative regulations governing the licensing of participants in horse racing, including horse owners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth owner requirements that ensure and enhance the integrity of racing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission is affected by this administrative regulation. In 2017, the Commission issued approximately 7,000 licenses to horse owners participating in racing. This figure is consistent from year to 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: Horse owners desiring to participate in racing in Kentucky will be required to obtain a license and adhere to the requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An annual thoroughbred owner's license costs \$150, and a Standardbred owner's license costs \$125.

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

(a) Initially: There is no initial cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the



implementation and enforcement of this administrative regulation: Any costs incident to the issuance of licenses will be funded through the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 4:100. Trainers.**

RELATES TO: KRS 230.215, 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), KRS 230.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 23.0215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which horse racing shall be conducted in Kentucky. KRS 230.310 requires any person who desires to participate in racing in Kentucky to apply to the commission for a license. The function of this administrative regulation is to outline the requirements for trainers to participate in horse racing in Kentucky.

Section 1. Trainer's License Required. No horse may be raced in this state unless the trainer has been granted a current trainer's license by the commission.

#### Section 2. Trainer's License Limitations.

(1) A holder of a trainer's license shall:

(a) Be a person eighteen (18) years of age or older;

(b) Be qualified by experience or competence to care for and train race horses as determined by a standard examination prescribed and given at any time by the stewards; and

(c) Have in his or her charge a horse eligible to race.

(2) No trainer may be licensed to train under an assumed or stable name.

(3) No trainer shall engage in an activity directly or indirectly involving the racing performance of horses on association grounds other than those registered as being in his or her charge.

(4) A licensed trainer shall not also be currently licensed to participate in racing in this state as a jockey, apprentice jockey, jockey's agent, veterinarian, assistant veterinarian, dental technician, farrier, apprentice farrier, or as an association racing department employee, except as provided in 810 KAR 4:070.

(5) The commission may deny, suspend, or revoke the trainer's license of the spouse, or any member of the immediate family or household, or a licensee ineligible to hold a trainer's license, unless there is a showing on the part of the applicant or licensed trainer, and the commission so finds, that his or her participation in racing as a trainer shall in no way circumvent the intent of this administrative regulation by permitting a person, under the control or direction of a licensee ineligible to hold a trainer's license, to serve in essence as a substitute for the ineligible person.

#### Section 3. Duties and Responsibilities.

(1) In the absence of substantial evidence to the contrary, a licensed trainer shall bear primary responsibility for the proper care, health, training condition, safety, and protection against the administration of prohibited drugs or medication of horses in his or her charge.

(2) A licensed trainer:

(a) Shall register with the racing association security all persons in his or her employ and insure that those persons are duly licensed within twenty-four (24) hours after the employees arrive on association grounds or are employed. Upon discharge of an employee, a trainer shall promptly notify track security and the commission license administrator.

(b) Shall carry workers' compensation insurance covering his or her employees in connection with racing as required by KRS Chapter 342.

(c) Shall register with the racing secretary all horses in his or her charge. No licensed trainer may take or keep in his or her charge a horse owned wholly or in part, or controlled by, a person unlicensed as an owner. No licensed trainer shall assume responsibility for a horse not under his or her active care and supervision, except as provided by subsection (4) of this section.

(d) In the absence of substantial evidence to the contrary, shall bear primary responsibility for horses he or she enters as to eligibility; weight allowance claimed; physical fitness to perform creditably at the distance entered; absence of prohibited drugs or medications; proper shoes, bandages, and equipment; and timely arrival in the saddling paddock. A licensed trainer shall bear joint responsibility with the licensed owner for horses he or she enters as to stakes payments and jockey fees due.

(e) Shall furnish the name of the jockey engaged to ride each horse entered at the time of entry. If no rider has been named at the time of entry or the rider named is unavailable, then the stewards shall name a rider.

(f) Shall personally attend his or her horses in the paddock and supervise the saddling thereof, unless excused by the stewards. If a licensed trainer is to be absent from association grounds where his or her horses are stabled, he or she shall provide a substitute to attend the saddling of horses already entered. The substitute shall:

1. Be his or her assistant trainer or another licensed trainer;
2. Be approved by the stewards; and

3. Assume complete responsibility for horses to be entered.

(g) May attend the taking of urine, blood, or other biological sample approved by the commission from a horse in his or her charge by the commission veterinarian, or may delegate one of his or her licensed employees to do so.

(h) Shall maintain the stable area assigned to him in a clean, neat, and sanitary condition at all times, and ensure that fire-prevention laws are strictly observed.

(i) Shall promptly report to the commission veterinarian or stewards any sickness or death of any horse in his or her charge.

Section 4. Ownership Restrictions. No licensed trainer shall have any interest, by ownership or lease in the racing or breeding qualities, in a horse of which he or she is not the trainer at any race meeting at which the trainer is in charge of a racing stable.

Section 5. Suspension. No horse in the charge of a trainer whose license has been revoked or suspended shall be permitted to race during such suspension. Upon application by the owners of the suspended horse, the stewards may approve the transfer of the horse to the care of another licensed trainer and, upon the approved transfer, the horse may be entered to race.

Section 6. Assistant Trainer.

(1) A licensed trainer may employ an assistant trainer.

(2) An assistant trainer shall be:

(a) Licensed before acting in such capacity on behalf of his or her employer; and

(b) Qualified by experience or competence to care for race horses as determined by a standard examination prescribed and given at any time by the stewards.

(3) A licensed assistant trainer shall assume the same duties and responsibilities that are imposed on a licensed trainer.

(4) A licensed trainer shall be jointly liable and responsible with his or her licensed assistant trainer for all acts and omissions of the assistant trainer in a racing matter.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements and responsibilities imposed upon licensed horse trainers who participate in racing in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the rules and requirements to participate as a trainer in racing in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.280 prohibits any person from conducting a horse race meeting for any stake, purse, or reward within the Commonwealth without securing the required license from the Commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth owner requirements that ensure and enhance the integrity of racing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

(c) How the amendment conforms to the content of the authorizing statute: 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: In 2017, the Commission issued approximately 1300 licenses to horse trainers participating racing. This figure is consistent from year to 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: Horse trainers desiring to participate in racing in Kentucky will be required to obtain a license and adhere to the requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An annual thoroughbred trainer's license costs \$150.00.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any costs incident to the issuance of licenses will be funded through the budget of the Commission.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse

Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 5:001. Definitions.**

RELATES TO: 810 KAR Chapter 5

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 5.

**Section 1. Definitions.**

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and which is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Also eligible" means in standardbred racing:

(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or

(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible if a finalist is scratched by the judges for a rule violation, or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward or judge or official of a meeting.

(5) "ARCI" means the Association of Racing Commissioners International.

(6) "Association" is defined by KRS 230.210(1).

(7) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 5:030.

(8) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(9) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(10) "Commission" means:

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

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(11) "Condition race" means an overnight race in which eligibility is determined according to specified conditions, which may include the following:

(a) Age;

(b) Sex;

(c) Earnings;

(d) Number of starts; or

(e) Positions of finishes.

(12) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(13) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(14) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded does exceed the number of starters in the dash.

(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(16) "Declaration" means in standardbred racing the naming of a particular horse as a starter in a particular race.

(17) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(18) "Draw" means the process of determining post positions by lot.

(19) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(20) "Early closing race" means in standardbred racing a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(21) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(22) "Elimination heat" means in standardbred racing an individual heat of a race in which the contestants qualify for a final heat.

(23) "Entry" means the act of nominating a horse for a race in conformance with Title 810 KAR.

(24) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during which pari-mutuel wagering is permitted.

(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards, judges, or the commission.

(27) "Foul" means any action by any jockey or driver that tends to hinder another jockey or any horse in the proper running of the race.

(28) "Futurity" means in standardbred racing a stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

(29) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

(a) Age;

- (b) Sex;
- (c) Claiming price; or
- (d) Performance.

(30) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(31) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(32) "In harness" means, in standardbred racing, that the performance will be to a sulky.

(33) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(34) "Late closing race" means in standardbred racing a race for a fixed amount of money in which entries close less than six (6) weeks but not more than three (3) days before the race is to be contested.

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(36) "Licensed premises" means the location and physical plant described in response to question R of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(38) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(39) "Month" means calendar month.

(40) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(41) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(42) "Nominator" means the person in whose name a horse is entered for a stakes race.

(43) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(44) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(45) "Overnight race" means a contest for which entries close at a time set by the racing secretary.

(46) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(47) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.

(48) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(49) "Post" means the starting point of a race.

(50) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(51) "Post time" means the advertised moment scheduled for

the arrival of all horses at the starting point for a race.

(52) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules which, if true, would exclude that horse or driver from racing.

(53) "Purse" means the gross cash portion of the prize for which a race is run.

(54) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(55) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(56) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(57) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(58) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(59) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(60) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(61) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with Title 810 KAR.

(62) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(63) "Simulcasting" is defined by KRS 230.210(11).

(64) "Stable name" means in standardbred racing a name used other than the actual legal name of an owner or lessee and which has been registered with the United States Trotting Association.

(65) "Stake" means in standardbred racing a race which will be contested in a year subsequent to its closing in which the money given by the association conducting the race is added to the money contributed by the nominators, all of which except deductions for breeders or nominator's awards belongs to the winner or winners, and in which, except as provided in 810 KAR 5:050, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(66) "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race, with the fees to be included in the purse.

(67) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(68) "Subscription" means nomination or entry of a horse in a stakes race.

(69) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(70) "Suspended" means withdrawal by the steward or commission of racing privileges.

(71) "USTA" means the United States Trotting Association.

(72) "Year" means twelve (12) consecutive months beginning with January and ending with December.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at

this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 5 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 5.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's licensed race tracks and all individual licensed participants in horse racing are potentially affected by this administrative regulation's establishment of definitions pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Licensed racing associations and individual participants in horse racing will be required to adhere to the requirements and rules set forth in the regulations in KAR Title 810 pertaining to horse racing. This administrative regulation defines terms that appear in 810 KAR Chapter 5.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.260.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 5:010. Registration and identification of horses.

RELATES TO: KRS 230.215(2), 230.260(1), (7), (2)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)



NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements concerning the registration, ownership, and identification of horses, and the furnishing of information about standardbred horses.

Section 1. Registration. All matters relating to registration of standardbred horses shall be governed by the rules of the United States Trotting Association.

Section 2. Bona Fide Owner or Lessee. A horse shall race in the name of:

- (a) The bona fide owner; or
- (b) The lessee, and a copy of the lease shall be recorded with the judges before the horse is permitted to race.

Section 3. Program Information.

(1) A printed program shall be available to the public at any meeting in which horses are raced for purse money. A program shall furnish at a minimum:

- (a) Horse's name and sex;
- (b) Color and age;
- (c) Sire and dam;
- (d) Owner's name; and
- (e) Driver's name and colors.

(2) At extended pari-mutuel meetings, the program shall also furnish:

(a) In claiming races, the price for which the horse is entered to be claimed;

(b) At least two (2) accurate performance chart lines. An accurate performance chart line shall include:

1. Date of race;
2. Place of race;
3. Size of track, if other than a half-mile track;
4. Symbol for free-legged pacers;
5. Symbol for hobbled trotters;
6. Track condition;
7. Type of race;
8. Distance;
9. Fractional times of the leading horse including race time;
10. Post position;
11. Position of:
  - a. One-quarter (1/4);
  - b. One-half (1/2);
  - c. Three-quarters (3/4);
  - d. Stretch with lengths behind leader; and
  - e. Finish with lengths behind leader;
12. Individual time of the horse;
13. Closing dollar odds;
14. Name of the driver; and
15. Names of the horses placed first, second, and third by the judges. The standard symbols for breaks and park-outs shall be used, if applicable;

(c) Information indicating drivers racing with a provisional license;

- (d) Information indicating pacers racing without hobbles;
- (e) Information indicating trotters racing with hobbles;

(f) For the current and preceding year, a summary of starts in purse races, earnings, and best win time. A horse's best win time may be earned in either a purse or non-purse race;

(g) The name of the trainer and stable, if applicable; and

(h) The date, place, time, driver, finish, track condition, and distance on the consolidated line, if the race is not one (1) mile.

(3) All horses drawn into an early closer, a late closer, stake, or futurity shall be listed in the official program.

Section 4. Check on Identity of Horse. An association official or member of the commission, or their respective agents, may request information concerning the identity and eligibility of a horse on the grounds of a track, and may examine that horse for the purpose of establishing the horse's identity or eligibility. If the

owner or party controlling that horse refuses to supply the information or to allow an examination, or fails to give satisfactory identification, the horse and the owner or party shall be barred and suspended or expelled.

Section 5. Identification Requirements. A horse shall not start at an extended pari-mutuel meeting if the horse has not:

- (1) Been tattooed,
- (2) Been freeze branded; or
- (3) Received an electronic horse identification microchip which:
  - (a) Accurately identifies the horse; and
  - (b) Complies with the international standard ISO 11784:1996/Amd 1:2004.

Section 6. False Chart Lines. An official, clerk, or person who enters a chart line on an electronic eligibility certificate if the race has not been charted by a licensed charter shall be in violation of this administrative regulation.

Section 7. Withholding Registration. A person withholding a registration certificate from the owner or lessee of a horse, after proper demand has been made for the return thereof, shall be suspended until the certificate is returned.

Section 8. Incorporation by Reference.

(1) "ISO 11784, Radiofrequency identification of animals," 1996/Amd 1:2004, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the registration and identification of horses in standardbred racing, as well as program information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide clear rules concerning the registration and identification of horses and the provision by racing association of accurate information concerning horses in racing programs.



(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. This administrative regulation prescribes rules concerning horse registration and identification, program information, and conditions under which the horses will become eligible to race in particular standardbred races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by establishing requirements concerning the registration and identification of horses and program information.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the registration and identification of horses and program information in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied

because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215(2) and 230.260(8).

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? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no costs to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 810 KAR 5:020 Eligibility and classification.

RELATES TO: KRS 230.215, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for the eligibility and classification of horses for races and medical tests required.

##### Section 1. Electronic Eligibility.

(1) A horse shall not be permitted to start in any betting or non-betting race, qualifying race, time trial, or official workout without first securing an electronic eligibility certificate.

(2) The race secretary shall check each electronic eligibility certificate to certify each horse's eligibility to a race.

Section 2. Racing Season and Recorded Winnings. For purposes of eligibility, a racing season or racing year shall be the calendar year.

Section 3. Sale or Lease during Eligibility Year. If a horse is sold or leased after an electronic eligibility certificate is issued for the current year, the seller or the authorized agent of the seller shall endorse the transfer of the eligibility certificate to the new owner or lessee. The transfer shall be effective upon electronic transfer of the electronic registration certificate by the clerk of the

course. Any sale or lease of a horse shall be recorded with the United States Trotting Association.

Section 4. Leased Horses. A horse on lease shall race in the name of the lessee. An electronic eligibility certificate shall not be issued to a horse under lease unless a copy of the lease is filed with the association. For purposes of issuance of electronic eligibility certificates or transfers of ownership, or both, a lease for an indefinite term shall be considered terminable at the will of either party unless extended or reduced to a term certain by written documentation executed by both the lessor and lessee.

Section 5. Correction of Electronic Eligibility Certificate. A correction of an electronic eligibility certificate shall be made only by a representative of the United States Trotting Association or a licensed official.

Section 6. Tampering with Electronic Eligibility Certificates. A person who tampers with an electronic eligibility certificate shall be charged with a violation pursuant to 810 KAR 8:030.

Section 7. Denial of Electronic Eligibility Certificate. An eligibility certificate may be denied to any person who fails to comply with Title 810 KAR and the provisions of KRS Chapter 230 relating to harness racing.

Section 8. Time Bars. A time record or bar shall not be used as an element of eligibility.

Section 9. Conflicting Conditions. If there are conflicting published conditions and neither is withdrawn by the association, the conditions more favorable to the nominator shall govern.

Section 10. (1) Standards for Overnight Events. The racing secretary shall prescribe standards to determine whether a horse is qualified to race in overnight events at a meeting. The standards shall be posted where declarations are made and shall be printed on all condition and qualifying sheets.

(2) If time standards are established at a meeting for both trotters and pacers, trotters shall be given a minimum of two (2) seconds allowance in relation to pacers.

Section 11. Posting of Overnight Conditions.

(1) At meetings other than extended pari-mutuel meetings, conditions for overnight events shall be posted at least eighteen (18) hours before entries close.

(2) At extended pari-mutuel meetings where races are held five (5) or more days per week, condition sheets shall be prepared. A condition sheet containing at least three (3) days racing programs shall be publicly available at least (3) days prior to entries being taken on any race program contained in the condition sheet. Conditions shall be clearly stated in all condition sheets and shall not state that conditions are TBA (To Be Announced).

(3) The race secretary shall forward copies of each condition book and overnight sheet to the presiding judge as soon as they are available to the public.

Section 12. Types of Races to be Offered.

(1) A racing program shall offer exclusively the following types of races:

- (a) Stakes and futurities;
  - (b) Early closing and late closing events;
  - (c) Condition races;
  - (d) Claiming races; and
  - (e) Preferred races limited to the fastest horses at the meeting.
- (2) Preferred races may be free-for-all races or invitations.

(3) A two (2) year old or three (3) year old horse shall not be eligible to be placed on the preferred or invitational list to race against older horses until it has won at least seven (7) races, unless requested by the owner or authorized agent and approved by the race secretary. The owner or authorized agent may withdraw the request at his or her discretion.

Section 13. Limitation on Conditions. A condition shall not be written so as to deprive a horse of an opportunity to race in normal preference cycles. More than three (3) also eligible conditions shall not be used in writing the conditions of an overnight event.

Section 14. Dashes and Heats. A dash or heat shall be considered a separate race for the purposes of conditioned racing.

Section 15. Selection or Drawing of Horses. For any overnight event, each starter and also eligible shall be drawn by lot from those properly declared in, except that a race secretary shall establish a preference system for races as provided in 810 KAR 5:060, Section 24. However, if necessary to fill a card, a maximum of one (1) race per day shall be divided into a maximum of two (2) divisions after preference has been applied. The divisions shall be selected by the racing secretary. For all other overnight races that day that are divided, the division shall be by lot unless the conditions provide for a division based on performance, earnings, sex, or claiming price.

Section 16. Rejection of Declaration Based Upon Past Performance. The racing secretary may reject the declaration on any horse whose past performance information falls below the competitive level of other horses declared.

Section 17. Substitute and Divided Races.

(1) Substitute races may be provided for each day's program and shall be so designated. A substitute race or a race divided into two (2) divisions shall be used only if regularly scheduled races fail to fill.

(2) If a race fills, it may be carried over one (1) day with the permission of the presiding judge.

Section 18. Qualifying Races. A horse that qualifies in a qualifying race shall not be deprived of its right to start in any race.

Section 19. Equine Infectious Anemia.

(1) A horse that has been determined, by means of a "Coggins test" administered by an approved laboratory, to be infected with or a carrier of equine infectious anemia shall not be permitted to race or be stabled at a licensed track.

(2) A horse shall not be permitted to enter or remain upon the grounds of any association where race meetings are conducted at any time unless a certificate is presented to an association representative certifying that the horse has been given a "Coggins test" during the past twelve (12) months, and that the result of the test was negative. The certificate shall properly identify the horse by tattoo number, freeze brand, or other commission-approved means of identification.

(3) A horse shall not start in a race unless a negative "Coggins" test written certificate for that horse is furnished to the race secretary, as required by subsection (2) of this section.

(4) An electronic eligibility certificate shall not be issued for a horse for which a positive "Coggins Test" has been reported. If an electronic eligibility certificate is issued for a horse that is later determined to be infected with, or to be a carrier of, equine infectious anemia, the presiding judge shall immediately notify the United States Trotting Association.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures concerning eligibility for races (including electronic eligibility), establishes rules concerning the classification of horses for races, specific rules concerning overnight events, and provisions concerning equine infectious anemia.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements and procedures concerning eligibility for races and to set forth procedures concerning various types of races to be run in standardbred racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This rule prescribes conditions under which the horses will become eligible to race in particular standardbred races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by establishing a comprehensive set of rules governing the eligibility of horses and the classification of races in standardbred racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to eligibility and classification in standardbred racing.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this new administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this new administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this new administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215(2) and 230.260(8).

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? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be cost will be required to administer this regulation for the first year.

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: None.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 5:030. Claiming races.**

RELATES TO: KRS 230.215, 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the commission to regulate conditions under which harness racing shall be conducted in Kentucky. This administrative regulation establishes the requirements for claiming races.

Section 1. (1) A horse entered in a claiming race may be claimed for its entered price by:

(a) A licensed horse owner who has a horse programmed to start in a pari-mutuel race at that meeting;

(b) A licensed horse owner who has received a claim certificate from the commission; or

(c) A person who has qualified for a license as a horse owner and who has received a claim certificate from the commission.

(2) Upon filing a completed signed Authorized Agent form (KHRC 2-060-01) with the judges, an authorized agent may claim for a qualified owner in his own right, but only for the account of the person for whom he is agent.

(3) To qualify for a license as an owner, the applicant shall have a current United States Trotting Association or Standardbred Canada membership as an owner or membership as an associate-member.

(4) A person shall not knowingly effect a false claim by inducing another to claim a horse for him or her.

Section 2. Prohibitions.

(1) A person shall not claim his or her own horse and shall not claim a horse trained or driven by him or her.

(2) A person shall not claim more than one (1) horse in a race.

(3) A qualified owner or the owner's agent shall not claim a horse for another person.

(4) An owner shall not cause his or her horse to be claimed directly or indirectly for his or her own account.

(5) A person shall not offer, or enter into an agreement, to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race.

(6) A person shall not enter a horse that has a mortgage, bill of sale, or lien of any kind pending, unless the written consent of the holder is filed with the clerk of the course of the association conducting that claiming race.

(7) (a) A person shall not have more than one (1) claim on any one (1) horse in any claiming race.

(b) Owners utilizing the same trainer may claim different horses from the same race. The trainer shall not act on behalf of either owner if the trainer has more than one (1) horse in the same race.

Section 3. Claiming Procedure. (1) Owner's credit.

(a) A person submitting a claim shall provide to the association:

1. Proof of possession of a valid license issued by the commission for the current year;

2. An amount equivalent to the specified claiming price plus the existing Kentucky sales tax as authorized by KRS 139.531(c); and

3. The United States Trotting Association fee for transfer of registration.

(b) By accepting the claim, the association assumes responsibility for and shall make payment to the owner of the horse claimed.

(c) The money due for a claimed horse shall be paid to the owner of the claimed horse within forty-eight (48) hours after the end of the race (Sundays excepted) by the association, if the horse has a current test complying with subsection (14) of this section and if a signed claiming authorization and proper registration papers are provided to the clerk of the course.

(3) The claiming price shall be printed on the program and all claims shall be for the amount so designated and any horse entered in a claiming race may be claimed for the designated amount.

(4) A claim shall be in writing, sealed and deposited at least thirty (30) minutes before the time originally scheduled for the race to begin in a locked box or designated location provided for this purpose by the commission.

(5) The claim shall be examined by the judges or their designee prior to the start of the race. The association's designee shall be prepared to state whether sufficient funds are on deposit in the amount equivalent to the specified claiming price and any other required fees and taxes. The judges shall have a public announcement made and information scrolled on the simulcast video stating there has been a claim made or, in the case of multiple claims, the number of claims made on a horse during the post parade. The successful claimant will be announced after the completion of the race.

(5) An official shall not open the claim box or give any information on claims filed until after the horses leave the paddock for the post parade.

(6) If more than one (1) claim is filed for the same horse, the owner shall be determined by lot by the judges.

(7) A horse claimed shall be delivered immediately by the original owner or his or her trainer to the successful claimant upon authorization of the judges after the post-race tests are finished; and:

(a) The horse's halter shall accompany the horse;

(b) The horse's shoes shall not be altered or removed; and

(c) The hobble measurements of a claimed horse shall be made available to the successful claimant by the paddock judge.

(8) An owner shall not refuse to deliver a horse legally claimed out of a claiming race.

(9)(a) A horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event.

(b) Title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash.

(c) The judges shall void the claim and return the horse to the original owner if:

1. The horse suffers a fatality during the running of the race or dies or is euthanized before leaving the track; or

2. The commission veterinarian determines the horse will be placed on the Veterinarian's List as bled, unsound, or lame before the horse is released to the successful claimant.

(d) The judges shall not void the claim if, prior to the race in which the horse is claimed, the claimant indicates on the claim envelope that he or she elects to claim the horse regardless of whether the commission veterinarian determines the horse will be placed on the Veterinarian's List as bled, unsound, or lame.

(e) The final vesting of title to a claimed horse shall be subject to the conditions and provisions set forth in this administrative regulation.

(10) (a) The judges may require any person making a claim for a horse to affirm by affidavit that the claimant is claiming the horse for his or her own account or as authorized agent and not for any other person.

(b) A person shall not knowingly make a false statement regarding the claiming process.

(11) (a) A claimed horse may start in a race in which the claiming price is less than the price at which the horse was claimed.

(b) If a horse is claimed, a right, title, or interest in that horse shall not be sold or transferred except in a claiming race for a period of thirty (30) days following the date of claiming.

(c) A claimed horse shall be required to race at the association where claimed for a period of thirty (30) days or the balance of the current racing meeting, whichever occurs first.

(12) A horse that has been claimed shall not be eligible to start in a race in the name or interest of the previous owner for thirty (30) days. The horse shall not remain in the same stable, or under the care or management of the first owner or trainer, or anyone

connected with the previous owner unless reclaimed out of another claiming race.

(13) A horse scratched from a claiming race shall not be eligible to be claimed.

(a) If a horse drawn to start in a claiming race is claimed and has been declared to start in a subsequent race, that horse shall be scratched from that race.

(b) For a period of thirty (30) days, a horse scratched from a claiming race and then entered in a subsequent race (regardless of classification) shall not be eligible to be claimed at any association licensed by the commission for the same claiming price the horse was carrying in the race from which it was scratched, except scratches that were due to and verified as race office errors. The claiming price must be listed in the program where normal claiming prices are carried and announcement of the right to claim is made by the track announcer and scrolled on the simulcast provider.

(14)(a) A claimed horse not otherwise selected by the judges for post-race testing shall be subjected to post-race testing in blood for the presence of substances regulated by 810 KAR Chapter 8. The results of the test shall be reported to the presiding judge.

(b) If a test is positive for a substance associated with a Class A, B, or C penalty, or for a TCO2 violation, 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 and of all expenses incurred after the date of the claim.

(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.

(d) An Equine Infectious Anemia (Coggins) test shall not be required of a horse that has been claimed if that horse has a valid certificate stating that within twelve (12) months of the day of the claim the horse has received a Coggins test and is negative for Equine Infectious Anemia. The certificate shall contain the horse's lip tattoo number or a uniform or standardized means of identification approved by the commission.

(15) (a) A filly or mare that has been bred shall not be declared into a claiming race for at least forty-five (45) days following the last breeding of the filly or mare. Following that period, a filly or mare that has been bred shall be declared into a claiming race only after a veterinarian has pronounced the filly or mare not to be in foal.

(b) A filly or mare pronounced in foal shall not be declared into a claiming race.

(c) If a filly or mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding that occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the claimant, if the mare is subjected to a pregnancy examination no later than twenty-one (21) days after the date of the claim, and is found to be pregnant as a result of that pregnancy examination.

(d) 1. A claimant seeking to void the claim shall file a petition to void that claim with the judges within three (3) days after the results of the pregnancy examination are received. Following the filing of the petition, the judges shall conduct a hearing after due notice to all parties.

2. If the judges determine that the claim is void, the claimant shall receive a reasonable cost from the previous owner to cover the cost of the pregnancy examination and reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race test, including the costs of transportation, board, reasonable training fees, and the testing process.

Section 4. In accordance with Section 3(1)(b) of this administrative regulation, the association shall pay the claiming price to the owner at the time the registration certificate and a signed claiming authorization are delivered for presentation to the successful claimant and shall withhold and pay the Kentucky sales tax to the Commonwealth pursuant to KRS 139.531(c).

Section 5. Claiming Conditions.

(1) Unless prior approval is given by the presiding judge,

claiming races shall be written to separate horses five (5) years and older from younger horses and to separate males from females.

(2) (a) If sexes are mixed, mares shall be given a twenty (20) percent minimum price allowance, except there shall be no price allowance given to a spayed mare racing in a claiming race.

(b) An allowance for age shall be given as follows:

1. Two (2) year olds shall be given a 100 percent allowance;

2. Three (3) year olds shall be given a fifty (50) percent allowance; and

3. Four (4) year olds shall be given a twenty-five (25) percent allowance.

(c) Claiming races for two (2) year olds may have conditions.

(d) Claiming races for three (3) year olds may have conditions.

(e) A claiming class may have conditions, if deemed necessary by the racing secretary and approved by the judges.

Section 6. Except as provided in 810 KAR 5:020, Section 20, a horse owner shall not be prohibited from determining the price for which his horse shall be entered.

Section 7. To facilitate transfer of claimed horses, the presiding judge or racing secretary may sign the transfer if he or she then sends the registration certificate and claiming authorization to the registrar for transfer.

Section 8. Fraudulent Claim.

(1) No person shall fraudulently declare a horse to a claiming race. If the judges determine that the declaration of a horse to a claiming race is fraudulent on the part of the declarer, they shall void the claim at the option of the claimant, and order the horse returned to the person declaring it in.

(2) No person shall submit a fraudulent claim on a horse in a claiming race. If the judges determine that a claim of a horse is fraudulent on the part of the person making the claim, they shall void the claim at the option of the person declaring it in, and return the horse to the person declaring it in.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning claiming races in standardbred racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning claiming races in standardbred racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to claiming races in standardbred racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning claiming races in standardbred racing that enhance the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's two licensed Standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and drivers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to claiming races in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated

entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 5:040. Farm, corporate, or stable name.

RELATES TO: KRS 230.215, 230.310

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for the licensing of racing stables under the stable name and disclosure of ownership.

Section 1. (1) Registration Required. A racing, farm, corporate, or stable name may be used by an owner or lessee if registered with:

- (a) The U.S. Trotting Association; and
- (b) The commission.

(2) A person shall provide his or her name to the commission if he or she has:

- (a) An interest in the stable; or
- (b) Intends to utilize its name.

(3) A person listed in a registered stable racing a horse shall have a license issued by the Kentucky Horse Racing Commission. An owner and any person listed in a registered stable shall be liable for entry fees and penalties imposed upon the registered stable.

Section 2. Suspension. If one (1) of the owners or persons



listed in a registered stable is suspended, all of the horses in that stable shall be included in the suspension.

### Section 3. Corporate and Limited Partnership Ownership.

(1) (a) If a horse is owned by a corporation, the corporation and any officer, director, or stockholder owning five (5) percent or more of the stock shall be licensed by the United States Trotting Association and the commission.

(b) A stockholder owning less than five (5) percent of the stock shall be reported monthly by the corporation to the commission, but shall not be required to be licensed by the commission. The information to be reported shall include names and amount of stock owned, address, Social Security number, and date of birth.

(2) (a) If a horse is owned by a limited partnership, the general partner and all limited partners owning an interest of five (5) percent or more shall be licensed by the United States Trotting Association and the commission.

(b) A limited partner owning less than a five (5) percent interest shall be reported monthly to the commission and the required information shall include names and interests owned, address, Social Security number, and date of birth. A limited partner owning less than a five (5) percent interest shall not be required to be licensed by the commission.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules under which racing, farm, corporate, or stable names may be used in conjunction with the ownership of horses. The regulation sets forth certain disclosure requirements concerning the identity of the individuals with ownership shares in horses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure transparency concerning the identity of individuals owning horses through business entities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This rule prescribes conditions under which horses become eligible to race in particular standardbred races.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by establishing a comprehensive set of rules governing the use of business entities in horse ownership. Disclosure requirements are imposed to ensure the transparency in the interest of the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of farm, corporate and stable names in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 5:050. Stakes and futurities.**

RELATES TO: KRS 230.215, 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for stakes and futurities.

Section 1. (1) Application. A stake or futurity sponsor or presenter shall submit an annual application to the commission for approval not less than 120 days prior to taking payments. The application shall contain:

(a) Satisfactory evidence that purse money is available;

(b) Proposed conditions;

(c) Sums to be deducted for organization or promotion; and

(d) An agreement to file with the commission a surety bond in the amount of the advertised purse, conditioned on faithful performance of the conditions, including guarantees that:

1. The stake or futurity will be raced as advertised unless:

a. Unanimous consent is obtained from owners of eligibles to transfer or change the date of the race; or

b. Prevented by a natural disaster or conditions beyond the control of the sponsor; and

2. Ensure the segregation of funds and an assurance that the sponsor or presenter shall make all payments.

3. If the association furnishes evidence of the availability of funds to conduct the race in a manner satisfactory to the commission, that evidence may be accepted in lieu of surety bond.

(2) Waiver of bond. The requirement to post a surety bond may be waived by the commission:

(a) Upon written request of a sponsor:

1. That is an association;

2. Whose financial statement shows a net worth of not less than five (5) times the amount of trust funds received from payments in stakes and futurities; and

3. Who furnishes a certified copy of the bank deposit in lieu of bond; or

(b) If bond is posted with the United States Trotting Association.

(3) Trust funds. Collections resulting from the forfeiture of a bond shall be paid to the contestants according to the order of finish, or if the race is not contested, shall be divided equally among owners or eligibles on the date the breach of conditions occurs.

(4) Appeal of application rejection. An applicant may appeal the rejection of an application to the commission by registered mail within twenty (20) days after the mailing of the notice of rejection. The appeal shall be in writing to the executive director.

(5) Receipt of printed conditions. The commission must receive printed conditions of all stakes and futurities by their closing dates.

(6) Conflicting conditions. Stakes and futurities conditions which conflict with KRS Chapter 230 or Title 810 KAR shall be refused.

(7) A sponsor or presenter shall:

(a) Provide or make available to the commission a list of nominations within sixty (60) days after the date of closing.

(b) Furnish to the commission, by January 15th of each year, a financial statement for the preceding year and, within thirty (30) days following the day of the race, a final financial statement;

(c) Notify all nominators and the commission within twenty (20) days of closing if the stake or futurity does not fill;

(d) Provide or make available to the commission, within twenty (20) days of closing, a complete list of all horses remaining eligible, segregated by age, sex, and gait.

(e) Provide or make available, within twenty (20) days following the last payment before the starting fee, a complete list of all horses remaining eligible, segregated by age, sex, and gait, to the owners or agents of all eligibles and to the commission, together with a list of any nominations transferred or substituted if permitted by the conditions. The list of eligibles shall include a resume indicating the current financial status of the stake and futurity, or of each individual division if there is more than one (1) division, by listing the number of horses remaining eligible, the amount of money that has been paid in, and the amount to be added. The purse shall constitute this amount plus starting fees, if any;

(f) Set the nominating date and the dates for sustaining payments (except the starting fee) for the 15th day of the month. There shall be no payments on yearlings except a nomination payment which shall be due not later than August 15. Before receiving any sustaining payments during the year the race is to be contested, the date and place of the race shall be stated. A stake or futurity sustaining fee shall not be due prior to February 15 of any year. There shall be no conditions that require payments in stakes or futurities after August 15 and before February 15 of the following year. The date for closing of the nominations of yearlings to stakes shall be May 15 and the date for closing of the nominations to futurities shall be July 15. There shall be a maximum of one (1) sustaining payment on two (2) year olds in stakes and futurities that do not have a two (2) year old division; and

(g) Advertise the week and place, if possible, that the stake or futurity will be raced before taking nominations. If either the week or place, or both, cannot be announced before taking nominations, that information shall be furnished as soon as the stake or futurity is sold or awarded.

(8) Estimated purse. An estimated purse shall not be advertised or published in excess of the actual purse paid or distributed during the previous year, unless increased by guaranteed added money. A stake or futurity shall not be raced for less than seventy-five (75) percent of the average estimated purse.

Section 2. (1) If an event is not raced due to circumstances beyond the control of a nontrack operating sponsor, the sponsor shall not be required to contribute a sum as added money, but instead shall only refund such nominating, sustaining, and starting

fees as it has collected toward the canceled event.

(2) A stake or futurity shall not be approved for extended pari-mutuel meetings if the added money is not at least thirty (30) percent of the purse. For all other meetings at least ten (10) percent of the purse shall be added.

(3) If a stake or futurity is split into more than two (2) divisions, the conditions of the race shall determine the divisions of the purse.

Section 3. Failure to Make Payment. Failure to make any payment required by the conditions shall constitute an automatic withdrawal from the event.

Section 4. Refund of Nomination Fee. If a mare nominated to a futurity fails to have a live foal, the nominator shall receive a return on his or her payment if notification is given by December 1 of the year the mare failed to foal. If conditions permit, the nominator may substitute.

Section 5. A sponsor shall not pay monetary awards to nominators or breeders from stake or futurity funds.

Section 6. Deductions Prohibited. A deduction, voluntary or involuntary, shall not be made from any purse, stake, or futurity unless the conditions specifically so provide. If deductions are permitted, reasonable deductions may be made for clerical, printing, postage, and surety bond expenses specifically related to the purse, stake, or futurity.

Section 7. Unless otherwise specified in the conditions of a stake or futurity, the money division shall be:

(1) Five (5) or more starters: fifty (50) percent to the winning horse, twenty-five (25) percent to the horse that finishes second, twelve (12) percent to the horse that finishes third, eight (8) percent to the horse that finishes fourth, and five (5) percent to the horse that finished fifth;

(2) Four (4) starters only: fifty (50) percent to the winning horse, twenty-five (25) percent to the horse that finishes second, fifteen (15) percent to the horse that finish third, and ten (10) percent to the horse that finishes fourth;

(3) Three (3) starters only: fifty-five (55) percent to the winning horse, thirty (30) percent to the horse that finishes second, and fifteen (15) percent to the horse that finishes third; and

(4) Two (2) starters only: sixty-five (65) percent to the winning horse and thirty-five (35) percent to the horse that finishes second.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the rules for entering stakes races and futurity races (futures are races in which horses are entered while still a foal, and sometimes prior to birth). The regulation establishes rules concerning the payment of sustaining and nomination fees, and the division of purses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific requirements and procedures for entry into stakes and futurity races.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This rule prescribes conditions under which the stake and futurity review and approved.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by establishing a comprehensive set of rules governing the selection of horses for entry into standardbred stakes and futurity races.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to entries and starters in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

(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:

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other explanation: None.

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)**

#### **810 KAR 5:060. Entries and starters.**

RELATES TO: KRS 230.215, 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entries.

##### **Section 1. Entries. An entry shall:**

(1) Be made in writing, by telephone, or electronically to the association racing secretary's office;

(2) Include the following information pertinent to the entry:

(a) The name of the horse;

(b) The name of the trainer;

(c) The name of the driver; and

(d) The class of the race into which the horse is to be entered; and

(3) Comply with the provisions of Section 20 of this

administrative regulation if the entry concerns an overnight event.

**Section 2. Payment of Entry Fee.** An entry fee shall be due and payable with declaration to start and shall not be refunded if the horse fails to start unless the horse dies between the time of declaration to start and the start of the race.

**Section 3. Receipt of Entries for Early Closing Events, Late Closing Events, Stakes and Futurities.**

(1) An entry that is not received prior to the hour of closing shall be ineligible.

(a) If an entry or payment in a stake, futurity, or early closing race is payable on a Sunday or a legal holiday that falls on Saturday, the payment shall be due on the following Monday, and if made by mail the envelope shall be postmarked on or before the following Tuesday.

(b) If a payment is due on a Monday that is a legal holiday, the payment is due on Tuesday, and if made by mail shall be postmarked on or before the following Wednesday.

(2) Postage meter. If an entry is received by letter bearing the postage meter date without a postmark, the postage meter date shall be considered to be a postmark if the letter is received within seven (7) days following the closing date of the event. A letter received later than seven (7) days following the closing date of the event shall not be considered a valid entry or payment.

**Section 4. Deviation from Published Conditions.** An entry and payment not governed by published conditions shall be void and any deviation from published conditions shall be a violation of this administrative regulation. A nominator who is allowed privileges not in accordance with the published conditions of the race, or which are in conflict with the published conditions or with Title 810 KAR, shall be barred from receiving any portion of the purse, and any person who knowingly allows the privileges shall be in violation of this administrative regulation.

##### **Section 5. (1) Ineligible Horse in a Stakes Race.**

(a) A nominator shall be required to guarantee the identity and eligibility of entries and declarations. If a nominator provides incorrect information, winnings shall be forfeited and redistributed to eligible entries and the person who provided the information shall be in violation of this administrative regulation.

(b) A person who obtains a purse or money through fraud or error, with the exception of paragraph (c) of this subsection, shall surrender or repay the proceeds upon demand. If the proceeds are not repaid upon demand, the horse that was the subject of the fraud or error, and all persons involved, shall be in violation of this administrative regulation and subject to suspension or revocation until repayment is made.

(c) If a horse is declared ineligible as a result of the negligence of the race secretary, the association shall reimburse the owner for the resultant loss of winnings.

(2) Ineligible horse drawn into overnight race. The trainer shall be responsible for entering the horse in the race for which it is eligible.

**Section 6. Transfer of Ineligible Horse.** A horse entered in an event for which it is not eligible may be transferred to any event for which it is eligible at the same gain.

**Section 7. Withholding Purse on Ineligible Horse.** An association shall withhold the purse of a horse, with or without a formal protest, if the association receives information that the entry or declaration was fraudulent or ineligible.

**Section 8. Agreement to Race Under Rule.** An entry shall constitute an agreement that the horse to be entered and all persons associated with or having control of the horse shall abide by Title 810 KAR.

##### **Section 9. Early Closing Events and Late Closing Races.**

(1) Date and place. The sponsor shall state the place and date the event will be raced and no change in date, program, events, or

conditions shall be made after the nominations have been taken without the written consent of the owners or trainers of all horses eligible at the time the conditions are changed.

(2) Filing conditions. An entry blank shall be filed with the commission.

(3) Payments shall be made on or before the 15th day of the month. Nominations and payments other than starting fees in early closing events shall be advertised to be received on the 15th day of the month.

(4) List of nominations. A complete list of nominations to any late closing race or early closing event shall be made available within twenty (20) days after the date of closing to each nominator and the commission.

(5) Procedure if event does not fill. If the event does not fill, each nominator and the commission shall be notified within ten (10) days and refund of nomination fees shall accompany the notice.

(6) Transfer provisions for change of gait.

(a) The following conditions shall govern transfers if there is a change of gait, unless the association makes available to the commission, at least thirty (30) days prior to the first publication, its early closing conditions and receives the approval of the commission for those conditions:

1. If a condition published for early closing events allows transfer for change of gait, the transfer shall be to the slowest class for which the horse is eligible, and eligibility shall be determined at time of closing of entries.

2. The race to which transfer may be made shall be the race nearest in time to the date of the event for which the horse was originally entered.

(b) A two (2) year old, three (3) year old, or four (4) year old entered in a class that corresponds to its age group shall be permitted to transfer only to a class for the same age group at the adopted gait, and shall be the race nearest in time to the date of the original event. If transfer is made, entry fees shall be so adjusted.

Section 10. Subsequent Payments; List of Eligibles. If subsequent payments are required by the published conditions, a complete list of those horses withdrawn or declared out shall be made within fifteen (15) days after the payment was due and the list has been made available to each nominator and the commission.

Section 11. Trust Funds. Fees paid in early closing events shall be segregated and held as trust funds until the event is contested.

Section 12. Early Closing Events by New Track. An early closing event at a pari-mutuel meeting shall not be advertised, nor shall nominations be taken for an early closing event, until the event has been approved by the commission. An association accepting nominations to early closing races, late closing races, stakes, or futurities shall provide stable space to a horse nominated and eligible to the event the day before, the day of, and the day after the race.

Section 13. Limitation on Conditions. Conditions of an early closing event or a late closing race shall not add a horse that has not been nominated to an event or eliminate an already nominated horse from an event by reason of the performance of the horse at an earlier meeting during the same season, and conditions purporting to do so shall be considered to be invalid. An early closing event or a late closing event shall not have more than two (2) also eligible conditions.

Section 14. Purse Requirements. In early closing races, late closing races, and overnight races requiring entry fees, all monies paid in by the nominators in excess of eighty-five (85) percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the advertised purse. In addition to adding excess entry fees as provided in this section, the sponsor shall add at least fifteen (15) percent to the advertised

purse of late closing races and overnight races. Fifteen (15) percent of all monies paid in by the nominators shall be added to all early closing races by the sponsor.

#### Section 15. Requirement to Run Race.

(1) An association shall specify how many entries are required for overnight events and, after the condition is fulfilled, the race shall be run unless declared off as provided in 810 KAR 5:070.

(2) If six (6) or more betting interests are declared in to start an early closing event or a late closing event, the race shall be run, unless it is declared off. Stakes and futurities shall be raced if one (1) or more horses are declared in to start unless declared off as provided in 810 KAR 5:070.

(3) In an early closing event, if fewer horses are declared in than are required to start, and all declarers are immediately so notified, the horse or horses declared in and ready to race shall be entitled to the sum of the entry fees submitted.

#### Section 16. Elimination Heats or Two (2) Divisions

(1) If the number of horses declared in to start exceeds twelve (12) on a half-mile track or sixteen (16) on a larger track, the association conducting the race shall have the option, before positions are drawn, of announcing that the race shall be run in elimination heats. A maximum of two (2) tiers of horses, allowing eight (8) feet per horse, shall start in any race.

(2) If an early closing event or late closing event is divided, each division shall race for at least seventy-five (75) percent of the advertised purse unless otherwise specified in the conditions of the race.

(3) If a stake race or futurity is divided, the conditions of the race shall determine the number of starters per division and the purse distribution.

#### Section 17. Elimination Plans.

(1) If elimination heats are required, or are specified in the published conditions, the race shall be run in the following manner unless otherwise stated in the conditions or conducted under another section of this administrative regulation. The field shall be divided by lot, and:

(a) The first division shall race a qualifying dash for thirty (30) percent of the purse;

(b) The second division shall race a qualifying dash for thirty (30) percent of the purse;

(c) The horses so qualified shall race in the main event for forty (40) percent of the purse; and

(d) The winner of the main event shall be the race winner.

(2) The judges shall draw the starting positions for the main event and shall determine which of the dash winners shall have the pole and which the second position, which of the two (2) horses that have been second shall start in third position, and which in fourth position, in similarly in succession, unless otherwise specified in the conditions of the race. An elimination dash and the concluding heat shall be programmed to be raced upon the same day or night, unless special provisions for earlier elimination dashes are set forth in the conditions.

(3) If there are three (3) or more separate heat or dash winners, those winners shall return for a single event race-off to determine the race winner. For that single event race-off, the participating horses shall be assigned post positions according to the order of their finish in the previous heat or dash.

Section 18. Overnight Events. More than nine (9) horses shall not start on a half-mile track in overnight events and more than twelve (12) horses shall not start on larger tracks at extended pari-mutuel meetings allowing eight (8) feet per horse.

Section 19. Elimination Race for Early Closing Event, Stake, or Futurity. If elimination races are provided for in the conditions of an early closing event, stake, or futurity, the elimination race shall be held not more than five (5) days prior to contesting the main event (excluding Sunday) and omitting the day of the race.

#### Section 20. Declaration.

(1) Extended pari-mutuel meetings. The declaration time shall be the time posted on the condition sheet.

(2) A horse shall not start in more than one (1) race on a racing day.

(3) The time when declarations close shall be the time in use at the meeting.

(4) The association shall provide an entry box with an aperture through which declarations shall be deposited.

(5) At the close of entries the presiding judge or the race secretary shall remove any entries in the box and sort the declarations at the time specified on the condition sheet.

(6) If it is necessary to reopen any race, a minimum of two (2) public announcements shall be made and the box shall be reopened at the announced time.

(7) In races of a duration of more than one (1) dash or heat at a pari-mutuel meeting, the judges may draw post positions from the stand for succeeding dashes or heats.

(8) Effect of failure to declare on time. If an association requires a horse to be declared at a stated time, failure to declare at that time shall be considered a withdrawal from the event.

(9) After declaration to start has been made, a horse shall be withdrawn only:

1. Because of sickness, lameness, injury, or hazardous track conditions; and

2. With the permission of the presiding judge.

(10) Horse omitted through error.

(a) Except as provided in this subsection, a drawing shall be final unless there is conclusive evidence that a horse was properly declared and omitted from the race and verified due to an error of the association's racing office.

(b) The race must be redrawn if the error is found prior to scratch time.

(c) If the race has multiple divisions, a horsemen's representative and a judge shall draw the division by lot rather than redraw the entire race.

(d) If there is a division or divisions with short fields, the division or divisions shall be chosen by lot to determine which division shall be drawn.

(e) If the error is found after scratch time, then the horse will be added to the outside.

Section 21. Qualifying Races. At an extended pari-mutuel meeting, declarations for overnight events shall be governed by the following:

(1) (a) Within forty-five (45) days of being declared in, a horse that has not raced previously at the gait chosen shall:

1. Complete a qualifying race in compliance with the conditions set forth by the association under the supervision of a judge holding a presiding or associate judge's license for pari-mutuel meetings; and

2. Acquire at least one (1) charted line by a licensed charter.

(b) Time and beaten lengths shall be determined by a standard photo finish.

(2) (a) The requirements of subsection (1) of this section shall apply to a horse that does not show a charted line for:

1. The previous season; or

2. Within its last six (6) starts.

(b) Uncharted races contested in a heat of more than one (1) dash, and consolidated according to subsection (4) of this section, shall be considered one (1) start.

(3) (a) The requirements of subsection (2) of this section shall not apply if a horse:

1. Has raced at a charted meeting during the current season; and

2. Has two (2) meetings at which the races are not charted.

(b) The information from the uncharted races may be:

1. Summarized, including each start; and

2. Consolidated in favor of charted lines.

(4) If the race is less than one (1) mile, the consolidated line shall list the carry date, place, time, driver, finish, track condition, and distance.

(5) (a) The judges shall require a horse that has been on the judge's list to successfully complete a qualifying race.

(b) If a horse has raced in individual time not meeting the qualifying standards for that class of horse, after making allowance for track variations, the horse shall be required to successfully complete a qualifying race.

(6) A horse shall be required to qualify in a qualifying race if it is on the judge's list for any of the following:

(a) Repeated breaks on a fast or good track;

(b) Scratched sick or lame in two (2) consecutive starts, scratched sick or lame following a qualifier or scratched sick or lame prior to or after a break line on a good or fast track;

(c) Refusing to come to the gate. Horses causing two (2) recalls shall be scratched and placed on the starter and qualifying list;

(d) Poor performance; or

(e) Being unmanageable.

(7) Qualifying races shall be:

(a) Held at least one (1) week prior to the opening of a meeting of ten (10) days or more; and

(b) Scheduled as needed through the last week of the meeting.

(8) (a) A race to qualify drivers and horses shall be charted, timed, and recorded.

(b) A race to qualify only drivers shall not be required to be charted, timed, and recorded.

(9) Except as provided in paragraph (b) of this subsection, if a horse takes a win record in a qualifying race, the record shall be prefaced with the letter "Q".

(b) 1. The record shall not be prefaced with the letter "Q" if, immediately prior to or following the race, the horse has been submitted to an approved urine, saliva, or blood test.

2. The presiding judge shall report the test on the judge's sheet.

(10) Before it is permitted to start in a race with pari-mutuel wagering, a horse must have a clean charted line within forty-five (45) days and meet the standards of the meeting.

(11) A horse shall not enter more than one (1) qualifying race per day.

#### Section 22. Coupled Entries.

(1) (a) Except as provided by the provisions of this section, two (2) or more horses shall be coupled as a single entry if they are:

1. Owned or trained by the same person; or

2. Trained in the same stable by the same management.

(b) A wager on one (1) of the horses coupled as an "entry" shall be a wager on all horses in the entry.

(2) (a) If a trainer enters two (2) or more horses, under bona fide separate ownerships or the same ownership, each horse may race as a separate betting entry if:

1. The association has requested they be permitted to race as separate betting entries; and

2. The judges approve the request.

(b) In overnight events the entries do not exclude any single interest.

(c) In overnight events, part of an uncoupled entry drawing also eligible may not be moved into a race to replace another part of the uncoupled entry.

(d) If more than one (1) horse is trained by the same person, that fact shall be stated prominently in the program.

(e) The judges may place both horses in an uncoupled entry if the judges deem that the actions of one part of uncoupled entry helped or improved the other.

(f) If the race is split in two (2) or more divisions, horses coupled or uncoupled in a single entry shall be seeded insofar as possible, in the following order, by:

1. Owners;

2. Trainers; and

3. Stables.

(g) Divisions and post positions shall be drawn by lot.

(h) Elimination heats also shall be governed by the provisions of paragraphs (f) and (g) of this subsection.

(3) The presiding judge or the race secretary shall be responsible for coupling horses.

(4) (a) If it is necessary to protect the public interest, horses that are separately owned or trained may be coupled for pari-



mutuel wagering; and

(b) An entry shall not be rejected on that basis.

(5) If an owner, lessor, or lessee has a vested interest in another horse in the same race, it shall constitute an entry.

Section 23. Also Eligibles.

(1) More than two (2) horses shall not be drawn as also eligibles for a race.

(2) The positions of also eligibles shall be drawn along with the starters in the race.

(3) If one (1) or more horses are excused by the judges, the also eligible horse shall:

(a) In handicap races in which the handicap is the same, take the place of the horse that it replaces;

(b) In handicap races in which the handicap is different, take the position on the outside of the horses with a similar handicap; or

(c) In other races, take the post position drawn by the horse it replaces.

(4) A horse shall not be added to a race as an also eligible unless the horse was drawn at the time declarations closed.

(5) (a) A horse shall not be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list shall not be drawn without the permission of the judges.

(b) The owner or trainer of a horse moved into the race from the also eligible list shall be notified that the horse is in to go.

(6) A horse on the also eligible list that is not moved into race by scratch time of the track shall be released.

Section 24. Preference.

(1) (a) Preference shall be given in overnight events according to a horse's last previous purse race during the current year.

(b) The preference date on a horse that has drawn to race and has been scratched shall be the date of the race from which the horse was scratched.

(2) If a horse is racing for the first time in the current year, the date of the first successful qualifier shall be considered the horse's last race date, and preference shall be applied accordingly.

(3) (a) If an error has been made in determining or posting a preference date, and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw.

(b) If a preference date error has occurred, the race shall be redrawn.

Section 25. Judge's List.

(1) (a) A horse shall be placed on a judge's list by the presiding judge if it is unfit to race because it:

1. Is dangerous;

2. Is unmanageable;

3. Is sick;

4. Is lame; or

5. Is unable to show a performance to qualify for races at the meeting; or

6. Has exhibited repeated breaks.

(b) The owner or trainer shall be notified in writing when a horse is placed on a judge's list, and the specific item listed in paragraph (a) of this subsection upon which the action is based.

(c) Declaration on a horse placed on a judge's list shall be refused.

(d) If a horse is placed on a judge's list, the clerk of the course shall make a note on the electronic eligibility of the horse stating the:

1. Date it was placed on the judge's list;

2. Reason it was placed on the judge's list; and

3. If the horse has been removed from the judge's list, the date of its removal.

(2) (a) A presiding judge or other official at a non-extended meeting shall not remove from the judge's list and accept as an entry a horse that:

1. Has been placed on a judge's list; and

2. Has not been removed from the judge's list because it is dangerous or unmanageable.

(b) A presiding judge shall refuse declarations on a horse that has been placed on, but not removed from, a judge's list.

(3) A horse scratched from a race because of lameness or sickness shall not race for a period of seven (7) days beginning with the day of the scratch.

Section 26. Driver.

(1) A declaration shall state the name of the horse's driver and the driver's colors.

(2) A driver shall not be changed after scratch time of the track without the permission of the judges. The judges shall grant permission if:

(a) The driver is unable to be on the premises for a good-faith reason beyond his or her control; or

(b) The driver is on the premises but unable to participate due to illness or injury.

(3) If a nominator starts two (2) or more horses, the judges shall approve the second and third drivers if no conflicts of interest exist between the ownership of the horses and the drivers.

Section 27. Withdrawals and Scratches.

(1) The presiding judge shall call a meeting of all horsemen on the grounds before the opening of an extended pari-mutuel meeting to appoint a committee to consist of the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horseman's Association to consider matters relating to the withdrawal of horses due to bad track or weather conditions.

(2) (a) If track conditions are questionable due to weather, the presiding judge shall call a meeting of the committee formed in subsection (1) of this section.

(b) Upon unanimous decision by the committee that track conditions are safe for racing, withdrawals shall not be made.

(3) (a) An entrant may scratch a horse if:

1. A decision by the committee that the track is safe is not unanimous; and

2. The entrant has posted ten (10) percent of the purse for the race.

(b) A person shall not scratch a horse for a reason other than sickness, lameness, injury, or hazardous track conditions.

(c) If sufficient withdrawals are received to cause the field to be less than six (6), the association shall have the right to postpone an early closing event or stake and cancel an overnight event.

(4) (a) The money posted pursuant to subsection 3(a)2 of this section shall be forwarded to the commission.

(b) The commission shall determine whether a withdrawal was for sickness, lameness, injury, or hazardous track conditions.

(c) The money shall be:

1. Forfeited if the commission determines that the withdrawal was not for good cause; or

2. Refunded if the commission determines that the withdrawal was for good cause.

(5) This section applies only to the withdrawal of horses that have been properly declared in and does not apply to postponement as set forth in 810 KAR 5:070.

Section 28. Length of Race and Number of Heats.

(1) A race or dash shall be listed at a stated distance in units no shorter than one-sixteenth (1/16) of a mile.

(2) The length of the race and the number of heats shall be stated in the conditions.

(3) If a distance or number of heats is not specified, any race shall be a single mile dash except at fairs and meetings of a duration of six (6) days or less where they shall be conducted in two (2) dashes at one (1) mile distances.

Section 29. Two (2) Year Olds. A two (2) year old shall not be permitted to:

(1) Start in a dash or heat exceeding one (1) mile in distance; or

(2) Race in more than two (2) heats or dashes per day.

## VOLUME 45, NUMBER 6 – DECEMBER 1, 2018

FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and prohibitions concerning the taking of entries into standardbred races, the rules concerning starters, and declarations to start. These rules provide an orderly means of determining which horses will be considered eligible to enter a race.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific requirements and methods for the taking entries, starters and declarations Standardbred racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This rule prescribes conditions under which horses become eligible to race in particular standardbred races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by establishing a comprehensive set of rules governing the selection of horses for entry into standardbred races.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of

racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to entries and starters in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for

subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 5:070. Running of the race.**

RELATES TO: KRS 230.215, 230.260(1), 230.280, 230.290(2), (3), 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the commission to promulgate administrative regulations setting out the conditions under which licenses may be denied, revoked, or suspended. KRS 230.361(1) authorizes the commission to promulgate regulations concerning the pari-mutuel wagering system. This administrative regulation establishes track rules and requirements concerning proper racing conduct, the starting and timing of races, placing, money distribution, post time and postponements, and protests.

Section 1. Driving Violations. A leading horse shall be entitled to any part of the track. After selecting a position in the home stretch, a driver of a horse shall not:

(1) Change either to the right or left during any part of the race if another horse is so near the driver that in altering positions, the driver compels the horse behind to shorten strides, or causes the driver of any other horse to pull the horse out of his stride;

(2) Jostle, strike, hook wheels, or interfere with another horse or driver;

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;

(4) Swerve in and out or pull up quickly;

(5) Crowd a horse or driver by "putting a wheel under him";

(6) "Carry a horse out" or "sit down in front of him", take up abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act that constitutes "helping";

(7) Allow a horse to pass inside needlessly or otherwise help another horse to improve its position in the race;

(8) Lay off a normal pace and leave a hole if it is well within the horse's capacity to keep the hole closed;

(9) Commit an act which impedes the progress of another horse or causes the horse to "break";

(10) Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a manner which interferes with another horse or causes the horse to change course or take back;

(11) Drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race;

(12) Whip under the arch of the sulky;

(13) Cross the inside limits of the course;

(14) Fail to set or maintain a pace comparable to the class being raced, including traveling an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race; or

(15) Kick a horse. Removal of a foot from the stirrups in and of itself shall not constitute the act of kicking.

Section 2. Leaving the Course.

(1) A horse or a horse's sulky that leaves the course by

brushing, running over, or going inside of a pylon demarcation shall have violated this administrative regulation and may be penalized by a disqualification if in the opinion of the judges:

(a) The action results in the horse gaining an unfair advantage over other horses in the race;

(b) The action helps the horse improve its position in the race; or

(c) The driver goes inside the pylons and does not immediately correct position.

(2) A horse using the inside to pass shall have complete clearance of the pylons.

(3) A driver striking pylons but not gaining an unfair advantage shall be cited for a violation of this administrative regulation unless he was forced to strike the pylons by circumstances beyond his control.

(4) If an act of interference causes a horse or part of a horse's sulky to be in violation of this administrative regulation and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

Section 3. Penalties.

(1) A horse that violates Section 1 or 2 of this administrative regulation shall:

(a) Be placed back one (1) or more positions in the heat or dash behind the horse with which the horse interfered;

(b) Be disqualified from receiving any winnings, if a horse is prevented from finishing as a result of the violation; or

(c) Be placed last among finishing horses, if a horse which the violating horse interfered with fails to finish the race due to a separate and unrelated incident.

(2) If a violation set forth in Section 1 or 2 of this administrative regulation is committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back, if the judges determine that the violation may have affected the finish of the race. Otherwise, penalties shall be applied individually to the drivers of any entry.

Section 4. Complaints, Reports of Interference.

(1) Complaints.

(a) A complaint by a driver relating to driving or other misconduct during a heat shall be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury.

(b) A driver desiring to enter a claim of foul or other complaint of violation of the rules shall, before dismounting, indicate to the judges the driver's intention to enter a claim or complaint, and immediately upon dismounting, the driver shall proceed to the telephone or judges' stand where the claim, objection, or complaint shall be immediately entered.

(c) The judges shall not cause the official sign to be displayed until the claim, objection, or complaint has been entered and considered.

(2) Report of interference. A driver shall report to the designated official any interference to himself or herself or to the driver's horse by another horse or driver during a race.

Section 5. Unsatisfactory Drive; Fraud.

(1) A heat in a race shall be fairly contested by each horse in the race and each horse shall be driven to the finish.

(2) A horse shall not be driven:

(a) With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;

(b) In an inconsistent manner with the intent to improperly manipulate the outcome of a race; or

(c) To perpetrate or to aid in a fraud.

(3) The judges shall substitute a competent and reliable driver at any time prior to the start of the heat or race if the judges have reason to doubt the competence or reliability of the original driver.

Section 6. Removal and Substitution of Driver. A driver may be removed and another driver substituted after the positions have been assigned in a race if, in the opinion of the judges, a driver:

(1) Is unfit or incompetent to drive;

- (2) Refuses to comply with the directions of the judges; or
- (3) Is reckless in his or her conduct and endangers the safety of horses or other drivers in the race.

Section 7. Failure to Finish. If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled "did not finish."

Section 8. Disruptive Conduct.

- (1) A driver shall not engage in disruptive or distracting improper conduct during a race.
- (2) A driver may remove a foot from the stirrup temporarily for the purpose of pulling earplugs.

Section 9. Whipping.

- (1) A driver may have a whip that does not exceed four (4) feet with a snapper not longer than six (6) inches.
- (2) A person shall not use any goading device, chain or mechanical device, or appliance, other than the ordinary whip or crop, upon a horse in any race, training exercise, or while on association grounds.
- (3) (a) A whip or crop shall not be used in a brutal, excessive, or indiscriminate manner during a race, training exercise, or while on association grounds.
- (b) A driver shall use a whip only in the conventional manner, by holding the handle and whipping the horse only above the shafts with wrist and elbow movement only. Full swings or going behind the head is prohibited.
- (c) Welts, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section.
- (d) A driver shall not:
  - 1. Whip a horse under the arch or shafts of the sulky;
  - 2. Kick a horse;
  - 3. Punch a horse;
  - 4. Jab a horse;
  - 5. Use the whip so as to interfere with or cause disturbance to any other horse or driver in a race;
  - 6. Whip a horse after a race; or
  - 7. Whip a horse that is exhausted or no longer in contention to win the race.
- (4) A driver shall keep a line in each hand and both hands shall stay in front of the body of the driver from the start of the race until the finish of the race. The left line shall be held in the left hand and the right line shall be held in the right hand.

Section 10. Hopples.

- (1) A horse shall not wear hopples in a race unless it has qualified in hopples.
- (2) Having so started, the horse shall continue to wear them to the finish of the race.
- (3) A person shall not remove or alter a horse's hopples during a race, or between races, for the purpose of fraud.
- (4) A horse habitually wearing hopples shall not start in a race without them unless:
  - (a) The horse performs satisfactorily in a qualifying race; or
  - (b) The presiding judge excuses the horse from performing in a qualifying race.
- (5) A horse habitually racing free-legged shall not wear hopples in a race unless:
  - (a) The horse performs satisfactorily in a qualifying race; or
  - (b) The presiding judge excuses the horse from performing in a qualifying race.
- (6) A horse shall not wear a head pole protruding beyond its nose.

Section 11. Breaking.

- (1) If a horse breaks from its gait in trotting or pacing, the driver shall at once, if clearance exists, take the horse to the outside and pull it to its gait.
- (2) A driver shall not:
  - (a) Fail to properly attempt to pull the horse to its gait;
  - (b) Fail to take to the outside or inside if clearance exists;
  - (c) Fail to lose ground by the break; or

- (d) Fail to prevent extended break.

(3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish.

(4) A driver shall not allow a horse to break for the purpose of fraudulently losing a heat.

(5) If a horse or driver's actions cause another horse to be off-stride at the wire, the offending horse shall be placed behind the horse with whom it interfered after all other placements have been made.

(6) A horse making a break, which causes interference with other contesting horses, shall be placed behind all offended horses.

(7) The judges shall set a horse back one (1) or more places if this section is violated.

Section 12. Breaks. One (1) of the judges shall call out every break made, and the clerk shall at once note the break and its character in writing.

Section 13. Time Between Heats and Races. The time between separate heats of a single race shall be no less than forty (40) minutes. A heat shall not be called after sunset if the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

Section 14. Accidents.

- (1) If any horse in the current program falls or runs uncontrollably on the track or is involved in an accident after starting to warm up, that horse shall be permitted to start only after examination and approval by the commission veterinarian.
- (2) If an accident occurs, the judges shall allow adequate time in between posts to clear the track. A driver involved in an accident shall be cleared by an emergency medical technician or paramedic before resuming driving engagements.

Section 15. Sulkies.

- (1) A driver shall be seated in his sulky at the finish of the race or the horse shall be placed as not finishing.
- (2) The owner and trainer shall provide every sulky used in a race with uncolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. If necessary, the presiding judge may order the use of mud guards to be provided by the owners or trainers.
- (3) A sulky shall not be used in a race unless it meets the requirements of the rules and regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards".

Section 16. Helmets. A protective helmet, securely fastened under the chin and meeting the Snell Foundation 2000 Standard for Protective Headgear for Use in Harness Racing, shall be worn at all times on the premises of an association while:

- (1) Racing, parading, or warming up a horse prior to racing; or
- (2) Jogging, training, or exercising a horse at any time.

Section 17. Safety Vests.

- (1) A safety vest shall be worn while racing, parading, or warming up a horse prior to racing.

Section 18. A licensee shall not:

- (1) Refuse to comply with an order or ruling of a member or employee of the commission, a racing official, or judge,
- (2) Interfere with the performance of the duty of a person specified in subsection (1) of this section;
- (3) Threaten, strike, or harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission;
- (4) Sexually harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission; or
- (5) Use force or intimidation against an owner, trainer, driver or attendant of a horse, or an employee of the association or

commission.

Section 19. (1) A person or association shall not offer any money, benefit, or other inducement to any licensee, employee of the commission, or officer of a racing association to affect the entries to a race, the running of a race, or the outcome of a race.

(2) Any action prohibited by subsection (1) of this section shall be immediately reported to the judges who shall promptly inform the racing association and the commission.

Section 20. (1) An owner, trainer, agent, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse or a particular stable, thereby compelling or attempting to compel the racing secretary to reject an eligible entry.

(2) An action prohibited by subsection (1) of this section shall be immediately reported to the commission.

Section 21. An owner, agent, or driver who has entered a horse shall not demand of the association a bonus of money or other special award or consideration as a condition for starting the horse.

Section 22. Wagering.

(1) A driver shall not place a wager, or cause a wager to be placed on his or her behalf, or accept a ticket or winnings from a wager on a race, except:

- (a) A race on the horse he is driving; and
- (b) Through the owner or trainer of the horse he is driving.

(2) An owner or trainer who places a wager for his driver shall:

- (a) Maintain a complete record of the wager; and
- (b) Make the record available for examination by the judges upon request.

Section 23. Duty to Report Fraudulent Proposal. A person shall immediately report to the presiding judge the details of an offer, promise, or request for a bribe or wager intended to affect the outcome of a race.

Section 24. Denerving. (1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

- (a) The neurectomy has been reported by the trainer to the stewards; and
- (b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.

(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual certificate, racing permit, and entry in the electronic registration system shall fall:

(a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denerved horse if the neurectomy was performed at a location under the commission's jurisdiction; and

(b) Solely on the owner of the denerved horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this section and participates in the purse distribution, a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this section and is claimed, a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting that the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be made publicly

available.

Section 25. Spayed Mares. If a mare has been spayed:

(1) It shall be noted on the:

- (a) Registration certificate;
- (b) Electronic eligibility certificate; and
- (c) Program when the mare races; and

(2) The owner shall:

- (a) Notify the United States Trotting Association that the mare has been spayed; and
- (b) Return the mare's papers to the United States Trotting Association for correction.

Section 26. Starting Gate.

(1) Starter's control. The starter shall have control of the horses from the formation of the parade until the word, "go", is given.

(2) Before or during the parade, the starter shall inform the drivers of the number of scores permitted. After one (1) or two (2) preliminary warming up scores, the starter shall notify the drivers to proceed to the starting gate.

(3) A horse shall not be brought to the starting gate nearer than one eighth (1/8) of a mile before the start, if the length of the stretch permits.

(4) On a mile track, a horse shall be brought to the starting gate at the head of the stretch.

(5) The starting point shall be a point on the inside rail a distance of at least 200 feet from the first turn. The starter shall give the word "go" at the starting point.

(6) When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.

(7) If a recall is necessary, a light plainly visible to the driver shall be flashed and a recall sounded and, if possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. The starter may close the wings of the gate if an emergency situation arises.

(8) There shall be no recall after the word "go" has been given and any horse, regardless of position or accident, shall be considered a starter from the time the horse enters into the starter's control, unless dismissed by the starter or judges pursuant to subsection (10) of this section.

(9) The starter shall endeavor to start all horses in position and on gait, but a recall shall not be sounded for a breaking horse.

(10) The starter may sound a recall only for the following reasons, if the starter believes the integrity of the race may be jeopardized:

- (a) A horse scores ahead of the gate;
- (b) There is interference;
- (c) A horse has broken equipment;
- (d) A horse falls before the word "go" is given;
- (e) There is a malfunction of the starting gate;
- (f) A horse comes to the gate out of position; or
- (g) A circumstance arises which will not allow a fair start, as determined by the starter.

(11) A driver shall not:

- (a) Delay the start;
- (b) Fail to obey the starter's instructions;
- (c) Rush ahead of the inside or outside wing of the gate;
- (d) Come to the starting gate out of position;
- (e) Cross over before reaching the starting point;
- (f) Interfere with another driver during the start; or
- (g) Fail to come up into position.

(12) Unless granted permission by the presiding judge, a person other than the starter, or the starter's driver or operator, shall not be allowed to ride in the starting gate.

(13) Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers shall be prohibited. The volume shall not be higher than necessary to carry the voice of the starter to the drivers.

Section 27. Holding Horses Before Start.

(1) A horse shall not be held on the backstretch for more than three (3) minutes awaiting post time, except if delayed by an

emergency or by permission of the judges.

(2) Post time must be posted no later than two (2) minutes following a previous race with the exception of mutual malfunction.

(3) Horses may not be held on the track more than ten (10) minutes unless permission is granted by the Presiding Judge.

Section 28. Two (2) Tiers.

(1) If there are two (2) tiers of horses, the withdrawal of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier.

(2)(a) If a horse is drawn from any tier, horses on the outside shall fill the vacancy.

(b) If a horse has drawn a post position in the second tier, the driver of the horse may elect to score out behind any horse in the first tier, if the driver does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

Section 29. Starters.

(1) A horse shall be considered to have started when the word, "go", is given by the starter, and a horse shall be required to complete the course except in case of accident, broken equipment, or other circumstance which, in the opinion of the judges, makes it impossible or unsafe to complete the course.

(2) For the purpose of declaring a horse a nonstarter, the judges shall consider the actual starting point on the track regardless if there was a start.

Section 30. Unmanageable Horse.

(1) If, in the opinion of the judges or the starter, a horse is unmanageable or may cause accidents or injury to another horse or to any driver, it shall be scratched. The starter shall notify the judges of the scratch, who shall then notify the public.

(2) A horse shall be considered unmanageable if it causes two (2) recalls in the same dash or heat, in which case it shall be scratched.

Section 31. Bad Acting Horse. At a meeting where there is no wagering, the starter may place a bad acting horse on the outside. At a pari-mutuel meeting, this action may be taken only if there is time for the starter to notify the judges, who shall in turn notify the public prior to the sale of tickets for the race. If tickets have been sold, the bad acting horse shall be scratched under the provisions of Section 5 of this administrative regulation.

Section 32. Post Positions; Heat Racing. The horse winning a heat shall take the pole (or inside position) in the succeeding heat, unless otherwise specified in the published conditions, and all others shall take their positions in the order they were placed in the last heat. If two (2) or more horses finish in a dead heat, their positions shall be settled by lot.

Section 33. Shield. The arms of a starting gate shall be provided with a screen or a shield in front of the position for each horse, and the arms shall be perpendicular to the rail.

Section 34. Unfair Advantage Prior to Start. If a horse comes to the gate out of its assigned post position and gains an unfair advantage by moving either to the left or right to its assigned post position before the starter gives the word, "go," that horse shall be disqualified and placed by the judges.

Section 35. Malfunction of the Gate. A licensed starter shall check the starting gate for malfunctions before commencing a meeting and shall practice the measures to be followed in the event of a malfunction. Both the starter and the driver of the gate shall know and practice emergency measures, and the starter shall be responsible for the training of drivers in taking emergency measures.

Section 36. Timing Races. The time of a heat shall be taken by

(1) One electronic timing device; and

(2) One hand-held timing device.

Section 37. Track Measurement Certificate. An association shall file with the commission a certificate from a duly licensed civil engineer or land surveyor attesting that the track has been measured from wire to wire three (3) feet out from the pole or inside hub rail, and certifying in linear feet the result of the measurement. If there is a change or relocation of the hub rail, the track shall be measured and recertified.

Section 38. Time for Lapped on Break. The leading horse shall be timed and his time only shall be announced. A horse shall not obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.

Section 39. Time for Dead Heat. In case of a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

Section 40. Timing Procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

Section 41. Time Performances.

(1) Time performances shall be permitted with the permission of the presiding judge subject to the following:

(2) A urine test or blood test or both shall be required for any horse with a winning time performance.

(3) A workout for the judges or time trial performance shall not be used to qualify a horse to race.

Section 42. Unless otherwise provided in the conditions, a purse shall be distributed on the dash basis with the money awarded according to a horse's position in each separate dash or heat of the race. Purse money distribution in overnight events shall be limited to the first five (5) finishers.

Section 43. Dashes.

(1) Except in the case of stakes or futurities as set forth in 810 KAR 5:040, Section 7, unless otherwise specified in the conditions, the money distribution in dashes shall be in the following percentages: fifty (50), twenty-five (25), twelve (12), eight (8), and five (5).

(2) In early closing races, late closing races, or added money events, if there are less than five (5) starters, the remaining purse shall go to the race winner unless the conditions call for a different distribution.

(3) In overnight events, if there are less than five (5) starters, the purse for the position for which there are no starters shall be retained by the association.

(4) If there is a purse for which horses have started but were unable to finish due to an accident, all non-offending horses that did not finish shall share equally in the premium or premiums.

(5) If there is a purse for which horses have started but were unable to finish and the situation is not covered by subsection (4) of this section, the purse shall be paid to the winner.

Section 44. If unfavorable weather or other unavoidable cause exists that necessitates postponement of a race, and the judges consent, an association shall postpone a race in the following manner:

(1) Early closing races, stakes, and futurities shall be postponed to a definite hour the next fair day and good track.

(2) A late closing race, early closing race, stake, or futurity (except as provided in subsections (4) and (5) of this section) that cannot be raced during the scheduled meeting shall be declared off and the entrance money and forfeits shall be divided equally among the nominators who have horses declared in and eligible to start.

(3) A late closing race or early closing race that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary. A late closing race or early closing race



that has been started but postponed by rain earlier in the meeting shall be declared ended and the full purse divided according to the summary if there is sufficient time to conduct the race during the scheduled meeting.

(4) A stake or futurity shall be raced where advertised and the race meeting, if necessary, shall be extended. A stake or futurity that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, unless the association elects to extend the meeting to complete the race. A horse that is scratched after a heat and before a race is declared finished shall not participate in purse distribution from subsequent heats.

(5) Unless otherwise provided in the conditions of the race, unanimous consent shall be obtained from the association and from those with eligibles in the race before a stakes race or futurity may be transferred to another meeting.

(6) At a meeting of more than five (5) days duration, an overnight event may be postponed and carried over for a maximum of two (2) racing days.

(7) At a meeting of five (5) days duration or less, an overnight event or late closing race shall be cancelled and starting fees shall be returned if postponement occurs, unless the association adds the postponed race to the advertised program and the race is held within two (2) weeks of cancellation.

(8) A postponed race may, at the option of the association, be contested in a single mile dash. If a race is postponed under this administrative regulation, the association shall select the order in which the events shall be raced in any combined program.

#### Section 45. Post Time.

(1) If racing is conducted at night or twilight, the racing program shall be completed no later than 12:00 a.m., midnight.

(2) Post time for the first race of the evening shall be fixed by the association. A delay in the first post of not more than ten (10) minutes from the established post time may be taken without prior approval of the commission.

#### Section 46. Number of Races Per Program.

(1) If eight (8) races are programmed, four (4) completed races shall constitute a completed program.

(2) If nine (9) races are programmed, five (5) completed races shall constitute a completed program.

(3) If ten (10) or more races are programmed, six (6) completed races shall constitute a completed program.

#### Section 47. Postponements.

(1) Racing shall not be conducted by an association over a track that is dangerous to drivers or horses.

(2) If inclement weather or other conditions appear to make the track dangerous, the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horseman's Association shall determine whether racing shall be conducted or postponed.

(3) If a difference of opinion exists between the representative of the association and the representative of the Kentucky Harness Horseman's Association as to whether racing shall be conducted or postponed, the decision of the presiding judge shall be final.

#### Section 48. Protests. Protests shall:

(1) Be made only by:

- (a) An owner;
- (b) A manager;
- (c) A trainer; or
- (d) A driver; and

(2) Shall be made at any time before distribution of the purse is made;

(3) Shall be made in writing;

(4) Shall be sworn to; and

(5) Shall contain at least one (1) specific charge questioning eligibility which, if true, would prevent the offending horse from competing in the race.

Section 49. The judges shall, in case of protest, demand that

the driver and the owner or owners, if present, shall immediately testify under oath. If a person refuses to testify after being ordered to do so and the race has not yet started, that person's horse shall not be allowed to start or continue in the race, but shall be ruled out, and any entrance money shall be forfeited.

Section 50. Unless the judges find satisfactory evidence to warrant excluding the horse, they shall allow a horse to start or continue in the race under protest, and the purse, if any is won by that horse, shall be retained by the association on behalf of the commission to allow the interested parties to continue the protest proceeding, in accordance with Section 52 of this administrative regulation.

Section 51. A person shall not knowingly, and with intent to influence the results of a race, protest a horse falsely and without cause.

Section 52. This administrative regulation shall not affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution is made upon the official placing at the conclusion of the heat or dash.

Section 53. (1) A protest shall be reviewed and appealed in accordance with the procedures set forth in 810 KAR 8:030 and KRS Chapter 13B.

(2) The purse money affected shall be deposited with the association pending the decision of the protest review or appeal.

Section 54. A judge shall not refuse to accept a protest.

Section 55. A person who has knowledge, prior to a race, of information that would prevent an ineligible horse from running in a race, and who fails to file a protest prior to the race with regard to that horse, shall have waived the right to protest after the race if the protest would have prevented the ineligible horse from running in the race.

#### Section 56. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Rules and Regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards"; and

(b) The Snell Memorial Foundation's "2000 Standard for Protective Headgear for use in Harness Racing".

(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, <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the

public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a comprehensive set of rules for the conduct of standardbred races. The regulation sets forth rules concerning fouls, improper driving, timing of races, placing and money distribution, postponement and rescheduling, post time requirements, and protests.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a set of rules to ensure the orderly and fair running of standardbred races.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to various aspects of the running of standardbred races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the statutory mandate of the Commission to promulgate regulations prescribing the conditions under which horse racing is conducted 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: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers, and drivers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to various aspects of the running of standardbred races.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs are associated with complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

##### 810 KAR 5:080. Harness racing at county fairs.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate

administrative regulations governing the conduct of county fair races. This administrative regulation establishes conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission, and regulates eligibility for participation in harness racing at county fairs.

Section 1. Eligibility. A horse is eligible to participate in a two (2) or three (3) year old stakes race at a county fair if:

- (1) The horse is a two (2) year old or a three (3) year old that is "Kentucky-bred" as defined in 810 KAR 7:040;
- (2) All owners of the participating horse are current members of the Kentucky Colt Racing Association, Inc.;
- (3) All owners of the participating horse hold a current license with the commission; and
- (4) The trainer and driver of the participating horse hold current licenses with the commission.

Section 2. Track Requirements.

- (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.
- (2) The track shall be inspected and approved by a representative of the commission.
- (3) A track shall have a hub rail or pylons approved by the commission.
- (4) (a) A fair shall have safe and adequate stalls for participating horses.
- (b) If permanent stalls are not available, tents or other tie-in type stalls may be used.
- (c) Except as provided by paragraph (d) of this subsection, a county fair shall not charge stall rent for horses racing at the fair.
- (d) A county fair may charge stall rent if the fair is held on state-owned property.

Section 3. Fair Fees.

- (1) The Kentucky Colt Racing Association fees shall be as follows:
  - (a) A nomination fee of fifty (50) dollars per horse due on or before February 15 of each racing year;
  - (b) A sustaining fee of \$200 per horse due on or before April 15 of each racing year;
  - (c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry for the fair; and
  - (d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry for the fair.
- (2) A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 4. Officials.

- (1) The Kentucky Colt Racing Association shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.
- (2) At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.
- (3) A fair shall use licensed United States Trotting Association judges to preside over the racing.
- (4) The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility to race.
- (5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.
- (6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.
- (7) Officials shall be paid by the Kentucky Colt Racing Association.

Section 5. Starter. A fair shall use a licensed starter with adequate equipment.

Section 6. Use of Entry Fees.

- (1) The entry fees established in Section 3(1)(c) and (d) of this administrative regulation shall be retained by each fair as compensation for conducting its harness racing program and in reimbursement of the expenses incurred.
- (2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 7. Application for a License and Approval for Purse Distributions.

- (1) The Kentucky Colt Association on behalf of a fair shall apply to the commission for a license to conduct a harness racing event. A request for pari-mutuel wagering shall be included at the time of application.
- (2) Distribution of revenue for the Kentucky County Fairs shall be reviewed annually, not later than December 15 of each calendar year, by the advisory panel established in 810 KAR 7:040.

Section 8. Changes in Racing Program. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 9. Early Closers.

- (1) An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission on an annual basis.
- (2) An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section 10. Number of Starters and Purse Distributions. There shall be no more than two (2) trailers in any race at a county fair.

- (1) On a one (1) mile track, there shall be ten (10) horses on the gate and the race shall split on eleven (11) horses.
- (2) On a half mile track or five-eighths mile track, there shall be five (5) horses on the gate with two (2) trailers and the race shall split on eight (8) horses.
- (3) The purse for each race shall be divided as follows:
  - (a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;
  - (b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;
  - (c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;
  - (d) Two (2) starters - fifty (50) percent, twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and
  - (e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

Section 11. Points Distribution.

- (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:
  - (a) First place finisher - fifty (50) points;
  - (b) Second place finisher - twenty-five (25) points;
  - (c) Third place finisher - twelve (12) points;
  - (d) Fourth place finisher - eight (8) points;
  - (e) Fifth place finisher - five (5) points; and
  - (f) Each starter that finishes out of the money - one (1) point.
- (2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.
- (3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.
- (4) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with

the higher earnings in the early closing fair events in which the horses have competed.

(5) If any division of a race is rained out before the completion of all other divisions of that race, the points for distribution set forth in this section shall not apply, and instead one (1) point shall be awarded to each horse entered in each division of that race that was rained out.

Section 12. Entry Limitation. A horse shall not be allowed to compete in more than one (1) race at any fair.

#### Section 13. Drug Testing.

(1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 810 KAR 8:010 and 810 KAR 8:060.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned to allow the track announcer to be heard.

Section 14. Coggins Test. A current negative Coggins test shall be required for each horse racing at a fair.

Section 15. Drivers. A driver shall wear full colors, white pants, a safety vest that meets the standards set forth in 810 KAR 5:070 Section 21, and a safety helmet that meets the standards set forth in 810 KAR 5:070 Section 21, if on the track less than one (1) hour before the start of a fair racing program.

Section 16. Trophies. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section 17. Early Deadlines. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section 18. Programs. A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

(1) Non pari-mutuel tracks:

- (a) Horse's name and sex;
- (b) Color and age of horse;
- (c) Sire and dam of horse;
- (d) Owner's name;
- (e) Driver's name and colors;
- (f) Trainer's name; and
- (g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and

(2) Pari-mutuel tracks:

(a) All of the program information required by subsection (1) of this section;

(b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:

1. Date of race;
2. Location of race;
3. Size of track if other than a one-half (1/2) mile track;
4. Symbol for free-legged pacers;
5. Track condition;
6. Type of race;
7. Distance;
8. The fractional times of the leading horse including race times;
9. Post position;
10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;
11. Stretch with lengths behind leader;
12. Finish with lengths behind leader;
13. Individual time of the horse;

14. Closing dollar odds;

15. Name of the driver;

16. Names of the horses that placed first, second, and third by the judges; and

17. Standard symbols for breaks and park-outs, if applicable;

(c) Indicate drivers racing with a provisional license; and

(d) Indicate pacers that are racing without hobbles.

Section 19. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section 20. Violations. A person or association that violates a provision of this administrative regulation shall be subject to the penalties set forth in 810 KAR 8:030, Section 10.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the conditions under which harness at county fairs shall be conducted in Kentucky. Specifically, KRS 230.398 authorizes the commission to promulgate regulations establishing eligibility requirements for horses participating in harness racing at county fairs. This regulation establishes the eligibility requirements to race in the county fairs.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth in KRS 230.215(2) to "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth of Kentucky"; and the statutory authority set forth in KRS 230.398, "The racing commission shall have the authority to promulgate administrative regulations as may be necessary for the conduct of these races." While this is a new regulation that addresses harness racing at county fairs, it replaces 811 KAR 1:220. This regulation updates the title to 810 KAR 5:080 and the administrative regulation references within.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.215 and KRS 230.398.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation will assist in the effective administration of the statutes by referencing the new title and replacing 811 KAR 1:220.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: standardbred breeders; standardbred owners; boarding farm owners and employees; Kentucky veterinarians and equine healthcare facilities; horse transportation companies, farriers; farmers and suppliers of hay, feed and grain; equine supply companies; daily maintenance care and tack; Kentucky standardbred sale companies; retail stores and maintenance services; Kentucky Colt Association; the Kentucky counties hosting the fair; hotels and gas stations located near the county fairs; and state and local government entities which impose payroll taxes.

(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 expands the racing opportunities for owners and trainers of Kentucky-bred standardbred horses. All other entities identified in (3) will not require any additional responsibilities, but will reap the benefits of a stronger breeding industry in Kentucky as well as a supported fair circuit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with the administrative regulation. Rather, this regulation specifically offers more racing opportunities for Kentucky-bred standardbred horses. There are no fees to participate in the county fairs and the Kentucky Colt Association pays for the race officials at each county fair.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The entities identified in question (3) will benefit from a clearly defined set of regulatory requirements and guidelines concerning Standardbred racing at county fairs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require a source of funding for implementation and enforcement. The Kentucky Colt Association, an association outside of state government, administers the fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require 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 amendment does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated

entities in an equal manner.

## 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 Kentucky Horse Racing Commission and the counties that conduct harness racing as part of their annual county fairs 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. The statutory authority for this administrative regulation is found in KRS 230.215, 230.398.

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? Although there are no fees that will generate revenue for the state or local governments, there will be an increase in payroll taxes and potential tourism dollars on all participants as noted in the Regulatory Impact Analysis and Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Continued growth in the program will increase payroll taxes and potential tourism dollars on all participants as noted in the Regulatory Impact Analysis and Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? There will be no cost to the agency to administer this program because the program is administered by the Kentucky Colt Association. The Kentucky Colt Association is not a state agency.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to the agency to administer this program in subsequent years because the program is administered by the Kentucky Colt Association. The Kentucky Colt Association is not a state agency.

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: None

## PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

### 810 KAR 6:020. Calculation of payouts and distribution of pools.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.361, 230.3615, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.260, 230.361(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the pari-mutuel system of wagering. This administrative regulation establishes the calculation of payouts and the distribution of pools for pari-mutuel wagering on live horse races.

#### Section 1. Definitions.

(1) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on

which a single pari-mutuel wager may be placed.

(2) "Breakage" means the net pool minus payout.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" means nondistributed pool monies that are retained and added to a corresponding pool in accordance with KAR Title 810.

(5) "Consolation payout" means a payout to individuals who do not correctly choose all of the selections in a multiple-pick wager, or a payout to individuals who wager on a horse in a multi-pick wager that is subsequently scratched.

(6) "Covered betting interest" means a betting interest or combination of betting interests that has been wagered upon.

(7) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" means a natural person, at least eighteen (18) years of age, except does not include any corporation, partnership, limited liability company, trust, or estate.

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" means the total amount wagered less refundable wagers and takeout.

(12) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(13) "Performance" means a specified number of races on a given race day that constitutes a full card of racing.

(14) "Profit" means the net pool less the gross amount wagered if using the standard price calculation procedure and the net pool less the net amount wagered if using the net price calculation procedure.

(15) "Profit split" means to calculate a payout by splitting a pari-mutuel pool equally between each winning combination and dividing each portion by the number of winning tickets.

(16) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(17) "Single commission pool" means a pari-mutuel pool where all entities accepting wagers use the same takeout rate.

(18) "Single price pool" means a pari-mutuel pool in which the entire profit is paid to holders of winning tickets after the deduction of the takeout.

(19) "Takeout" means the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and KAR Title 810.

(20) "Unbroken consolation price" means the profit per dollar plus one (1) dollar.

## Section 2. General Requirements.

(1) All pari-mutuel pools shall be separately and independently calculated and distributed. The takeout shall be deducted from each gross pool as stipulated by KRS 230.3615. The remainder of the pool shall be the net pool for distribution as payoff on winning pari-mutuel wagers.

(2) (a) Single commission pari-mutuel pools may be calculated using either the standard price calculation procedure or the net price calculation procedure.

(b) Multi-commission pari-mutuel pools shall be calculated using the net price calculation procedure.

(3) The standard price calculation procedure shall be as follows:

### (a) Single price pools - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout
Net Pool	=	Gross Pool - Takeout
Profit	=	Net Pool - Gross Amount Bet on Winner
Profit Per Dollar	=	Profit / Gross Amount Bet on Winner
\$1 Unbroken Price	=	Profit Per Dollar + \$1
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point

Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Profit shall be net pool less gross amount bet on all place finishers. Finishers shall split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two (2) unique prices.

(c) Profit split - show pool. Profit shall be net pool less gross amount bet on all show finishers. Finishers shall split profit 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three (3) unique prices.

(4) The net price calculation procedure shall be as follows:

### (a) Single price pool - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout for Each Source
Net Pool	=	Gross Pool - Takeout
Net Bet on Winner	=	Gross Amount Bet on Winner x (1 - Percent Takeout)
Total Net Pool	=	Sum of All Sources Net pools
Total Net Bet on Winner	=	Sum of All Sources Net Bet on Winner
Total Profit	=	Total Net Pool - Total Net Bet on Winner
Profit Per Dollar	=	Total Profit / Total Net Bet on Winner
\$1 Unbroken Base Price	=	Profit Per Dollar + \$1 for each source:
\$1 unbroken price	=	\$1 Unbroken Base Price x (1 - Percent Takeout)
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Total profit shall be the total net pool less the total net amount bet on all place finishers. Finishers shall split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two (2) unique unbroken base prices.

(c) Profit split - Show pool. Total profit shall be the total net pool less the total net amount bet on all show finishers. Finishers shall split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three (3) unique unbroken base prices.

(5) Each association shall disclose the following in its license application:

(a) Which price calculation method it will use for single commission pari-mutuel pools;

(b) The ticket denominations for each type of pari-mutuel wager;

(c) The procedures for refunds of pari-mutuel wagers;

(d) The takeout for each type of pari-mutuel wager;

(e) Which pari-mutuel wagers will include carryover and consolation pools and the percentages of the net pool assigned to each; and

(f) For each type of pari-mutuel wagering involving more than one (1) live horse race, the procedures to be used if a race is cancelled.

(6) The individual pools described in this administrative regulation may be given alternative names by each association if prior approval is obtained from the commission.

(7) A mutuel entry or a mutuel field in any race shall be a single betting interest for the purpose of each of the wagers described in this administrative regulation and the corresponding pool calculations and payouts. If either horse in a mutuel entry, or any horse in a mutuel field, is a starter in a race, the entry or the field selection shall remain as the designated selection for any of the



wagers described in this administrative regulation and the selection shall not be deemed scratched.

**Section 3. Pools Dependent Upon Entries for Live Horse Races.**

(1) Except as provided in subsection (3) of this section, when pools are opened for wagering all associations may:

- (a) Offer win wagering on all races with four (4) or more betting interests;
- (b) Offer place wagering on all races with five (5) or more betting interests; and
- (c) Offer show wagering on all races with six (6) or more betting interests.
- (d) Offer Quinella wagering on all races with four (4) or more betting interests;
- (e) Offer Exacta wagering on all races with four (4) or more betting interests;
- (f) Offer Trifecta wagering on all races with five (5) or more betting interests;
- (g) Offer Superfecta wagering on all races with six (6) or more betting interests;
- (h) Offer Big Q wagering on all races with three (3) or more betting interests; and
- (i) Offer Super High 5 wagering on all races with seven (7) or more betting interests.

(2) Except as provided in subsection (4) of this section, when pools are opened for wagering, associations shall not offer Twin Trifecta wagering on any races with six (6) or fewer betting interests.

(3) The chief state steward or presiding judge, or his or her designee, may authorize an association to offer a subject wager with less than the number of horses required by this section if:

- (a) Requested by the association; and
- (b) The integrity of the wager would not be affected by the smaller field.

(4) If a horse is scratched by the judges or stewards after wagering has commenced or a horse is prevented from running in a live horse race because of a failure of the starting gate, and the number of actual starters representing different betting interests is reduced below the requirements in Subsection 1 or Subsection 2 of this section, the association may cancel the affected wagers and refund the entire affected pools with the approval of the Chief State Steward or Presiding Judge, or his or her designee.

(5) In all cases in which the Chief State Steward or Presiding Judge, or his or her designee, authorizes the changes described in Subsection 4 or Subsection 5 of this section, the association shall provide a written report to the commission within twenty-four (24) hours of the post time of the race explaining the need to cancel the wagering pool.

**Section 4. Win Pools.**

(1) The amount wagered on the betting interest which finishes first shall be deducted from the net win pool and the balance remaining shall be the profit. The profit shall be divided by the amount wagered on the betting interest finishing first and the result shall be the profit per dollar wagered to win on that betting interest.

(2) The net win pool shall be distributed as a single price pool in the following precedence based upon the official order of finish:

- (a) To individuals whose selection finishes first, except if there are not any of those wagers, then;
- (b) To individuals whose selection finishes second, except if there are not any of those wagers, then;
- (c) To individuals whose selection finishes third, but if there are no such wagers, then;
- (d) The entire pool shall be refunded on win wagers for that race.

(3) (a) If there is a dead heat for first involving horses representing the same betting interest, the win pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the win pool shall be distributed as a profit split.

**Section 5. Place Pools.**

(1) The amounts wagered to place on the first two (2) betting interests to finish shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into two (2) equal portions, with each portion assigned to each winning betting interest and divided by the dollar amount wagered to place on that betting interest. The result shall be the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed in the following precedence based upon the official order of finish:

- (a) If horses in a mutuel entry or mutuel field finish in the first two (2) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;
- (b) As a profit split to individuals whose selection is included within the first two (2) finishers, except if there are not any of those wagers on one (1) of those two (2) finishers, then;
- (c) As a single price pool to individuals who selected the one (1) covered betting interest included within the first two (2) finishers, except if there are not any of those wagers, then;
- (d) As a single price pool to individuals who selected the third-place finisher, except if there are not any of those wagers, then;
- (e) The entire pool shall be refunded on place wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the place pool shall be distributed as a single price pool.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the place pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the place pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for second involving horses representing two (2) or more betting interests, the place pool shall be divided, with one-half (1/2) of the profit distributed to place wagers on the betting interest finishing first and the remainder of the profit distributed equally among place wagers on the betting interests involved in the dead heat for second.

**Section 6. Show Pools.**

(1) The amounts wagered to show on the first three (3) betting interests shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into three (3) equal portions, with each portion assigned to each winning betting interest and divided by the amount wagered to show on that betting interest. The result shall be the profit per dollar wagered to show on that betting interest.

(2) The net show pool shall be distributed in the following precedence based on the official order of finish:

- (a) If horses in a mutuel entry or mutuel field finish in the first three (3) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;
- (b) If horses of a mutuel entry or mutuel field finish as two (2) of the first three (3) finishers, the profit shall be divided with two-thirds (2/3) distributed to individuals who selected the mutuel entry or mutuel field and one-third (1/3) distributed to individuals who selected the other betting interest included within the first three (3) finishers, otherwise;
- (c) As a profit split to individuals whose selection shall be included within the first three (3) finishers, except if there are not any of those wagers on one (1) of those three (3) finishers, then;
- (d) As a profit split to individuals who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers, except if there are not any of those wagers on two (2) of those three (3) finishers, then;
- (e) As a single price pool to individuals who selected the one (1) covered betting interest included within the first three (3) finishers, except if there are not any of those wagers, then;
- (f) As a single price pool to individuals who selected the fourth-place finisher, except if there are not any of those wagers, then;
- (g) The entire pool shall be refunded on show wagers for that race.

(3) (a) If there is a dead heat for first involving two (2)

horses representing the same betting interest, the profit shall be divided with two-thirds (2/3) to individuals who selected the first-place finishers and one-third (1/3) distributed to individuals who selected the betting interest finishing third.

(b) If there is a dead heat for first involving three (3) horses representing a single betting interest, the show pool shall be distributed as a single price pool.

(c) If there is a dead heat for first involving horses representing two (2) or more betting interests, the show pool shall be distributed as a profit split.

(4) (a) If there is a dead heat for second involving horses representing the same betting interest, the profit shall be divided with one-third (1/3) distributed to individuals who selected the betting interest finishing first and two-thirds (2/3) distributed to individuals who selected the second-place finishers.

(b) If there is a dead heat for second involving horses representing two (2) betting interests, the show pool shall be distributed as a profit split.

(c) If there is a dead heat for second involving horses representing three (3) betting interests, the show pool shall be divided with one-third (1/3) of the profit distributed to show wagers on the betting interest finishing first and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for second.

(5) (a) If there is a dead heat for third involving horses representing the same betting interest, the show pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for third involving horses representing two (2) or more betting interests, the show pool shall be divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for third.

#### Section 7. Exacta Pools.

(1) The Exacta shall require the selection of the first two (2) finishers, in their exact order, for a single race.

(2) The net Exacta pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished in the correct sequence as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination included the betting interest that finishes first, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose combination included the betting interest that finished second, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Exacta wagers for that race.

(3) (a) If there is a dead heat for first involving horses representing the same betting interest, the Exacta pool shall be distributed as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Exacta shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the first-place betting interest with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose wagers correctly selected the winner for first-place and any of the betting interests which finished in a dead-heat for second-place, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on Exacta wagers for that race.

#### Section 8. Quinella Pools.

(1) The Quinella shall require the selection of the first two (2) finishers, irrespective of order, for a single race.

(2) The net Quinella pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose combination included either the first- or second-place finisher, except if there are not any of those wagers on one (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

(2) (a) If there is a dead heat for first involving horses representing the same betting interest, the Quinella pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

(c) If there is a dead heat for first involving horses representing three (3) or more betting interests, the Quinella pool shall be distributed as a profit split.

(3) If there is a dead heat for second involving horses representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

(4) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Quinella pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

#### Section 9. Trifecta Pools.

(1) The Trifecta requires selection of the first three (3) finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed finisher of any part of a mutuel entry or mutuel field shall be used, eliminating all other parts of that mutuel entry or mutuel field from consideration regardless of finishing order.

(3) The Trifecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on Trifecta wagers for that race.

(4) (a) If less than three (3) betting interests finish and the race is declared official, payouts shall be made based upon the order of finish of those betting interests that finish the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(5) (a) If there is a dead heat for first involving horses representing three (3) or more betting interests, all of the wagering combinations selecting three (3) betting interests that correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) betting interests that finish in a dead heat, irrespective of order, along with the third-place betting interest shall share in a profit split.

(6) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

(7) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

(8) (a) Trifecta wagering shall not be conducted on any race having fewer than five (5) separate betting interests.

(b) If fewer than five (5) horses start due to a late scratch or malfunction of the starting gate, the Trifecta shall be cancelled and the gross pool shall be refunded.

#### Section 10. Superfecta Pools.

(1) The Superfecta shall require selection of the first four (4) finishers, in their exact order, for a single race.

(2) The net Superfecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first four (4) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included in correct sequence, the first three (3) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Superfecta wagers for that race.

(3) (a) If less than four (4) betting interests finish and the race is declared official, payouts shall be made based upon the order of finish of those betting interests completing the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(4) (a) If there is a dead heat for first involving horses representing four (4) or more betting interests, all of the wagering combinations selecting betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing three (3) betting interests, all of the wagering combinations

selecting the three (3) betting interests that finish in a dead heat, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

(c) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

(5) (a) If there is a dead heat for second involving horses representing three (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) betting interests involved in the dead heat for second shall share in a profit split.

(b) If there is a dead heat for second involving horses representing two (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any two (2) of the betting interests involved in the dead heat for third shall share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three (3) finishers, in correct sequence, along with any interest involved in the dead heat for fourth, shall share in a profit split.

(8) Superfecta wagering shall not be conducted on any race having fewer than six (6) separate betting interests. If fewer than six (6) horses start due to a late scratch or malfunction of the starting gate, Superfecta wagering shall be cancelled and the gross pool shall be refunded.

#### Section 11. Super High-Five Pools.

(1) The Super High-Five shall require selection of the first five (5) finishers, in their exact order, for a single race.

(2) Unless otherwise stated, the net Super High-Five pool shall be distributed as a single-priced pool to those who have selected all five (5) finishers, in exact order, based upon the official order of finish.

(3) (a) Each association shall disclose in its license application whether it intends to schedule Super High-Five wagering and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Super High-Five scheduling shall require prior approval from the commission or its designee.

(4) If there are no winning wagers selecting all five (5) finishers, in exact order, the entire Super High-Five pool shall be added to the carryover.

(5) If due to a late scratch the number of betting interests in the Super High-Five pool is reduced to fewer than seven (7), the Super High-Five pool shall be cancelled and shall be refunded, except not the Super High-Five carryover pool.

(6) If a betting interest in the Super High-Five pool is scratched from the race, there shall not be any more wagers accepted selecting that scratched runner and all tickets previously sold designating that horse shall be refunded and that money shall be deducted from the gross pool.

(7) If any dead-heat occurs in any finishing position, all wagers selecting either of the runners finishing in a dead heat with the correct runners not finishing in a dead heat shall be winners and share the Super High-Five pool. Payouts shall be calculated by splitting the pool equally between each winning combination, then dividing each portion by the number of winning tickets.

(8) (a) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with the net pool of the Super High-Five pool conducted on the final day of the meeting as a single price pool to:

1. Individuals with tickets selecting the first five (5) finishers, in exact order, for the designated race, or, if there are not any of

those wagers, to;

2. Individuals with tickets selecting the first four (4) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

3. Individuals with tickets selecting the first three (3) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

4. Individuals with tickets selecting the first two (2) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

5. Individuals with tickets selecting the winner for the designated race, or, if there are not any of those wagers;

6. All money wagered into the Super High-Five pool that day shall be refunded and any carryover shall be retained and added to the Super High –Five pool on the first racing day of the next meeting.

(9) If, for any reason, the Super High-Five carryover shall be held over to the corresponding Super High-Five pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Super High-Five carryover plus accrued interest shall then be added to the net Super High-Five pool of the following meeting on a date and performance approved by the commission.

#### Section 12. Double Pools.

(1) The double shall require the selection of the first-place finisher in each of two (2) specified races.

(2) The net double pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selections finished first in each of the two (2) races, except if there are not any of those wagers, then;

(b) As a profit split to individuals who selected the first-place finisher in either of the two (2) races, except if there are not any of those wagers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest that finished first in either race, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose selection finished second in each of the two (2) races, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on the double wagers for those races.

(3) (a) If there is a dead heat for first in either of the races involving horses representing the same betting interest, the double pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in either of the races involving horses representing two (2) or more betting interests, the double pool shall be distributed as a profit split if there is more than one (1) covered winning combination.

(4) If a betting interest in the first half of the double is scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(5) If a betting interest in the second half of the double is scratched prior to the close of wagering on the first double race, all money wagered on the combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(6) If a betting interest in the second half of the double is scratched after the close of wagering on the first double race, all wagers combining the winner of the first race with the scratched betting interest in the second race shall be allocated a consolation payout.

(a) In calculating the consolation payout, the net double pool shall be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained.

(b) The broken consolation price shall be multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payout.

(c) Breakage shall not be included in this calculation.

(d) The consolation payout shall be deducted from the net double pool before calculation and distribution of the winning

double payout.

(e) Dead heats including separate betting interests in the first race shall result in a consolation payout calculated as a profit split.

(7) If either of the double races is cancelled prior to the first double race, or the first double race is declared "no contest," the entire double pool shall be refunded on double wagers for those races.

(8) (a) If the second double race is cancelled or declared a "no contest" after the conclusion of the first double race, the net double pool shall be distributed as a single price pool to individuals who selected the winner of the first double race.

(b) If there is a dead heat involving separate betting interests, the net double pool shall be distributed as a profit split.

#### Section 13. Big Q Pools.

(1) The Big Q shall require selection of the first two (2) finishers, irrespective of order, in each of two (2) designated races.

(a) Each winning ticket for the first Big Q race shall be exchanged for a free ticket on the second Big Q race in order to remain eligible for the second half Big Q pool.

(b) Exchange tickets shall be exchanged at attended ticket windows prior to the second race comprising the Big Q.

(c) There shall not be a monetary reward for winning the first Big Q race.

(d) Each of the designated Big Q races shall be included in only one (1) Big Q pool.

(2) In the first Big Q race only, winning wagers shall be determined using the following precedence based on the official order of finish for the first Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, those who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners, otherwise:

(b) Individuals whose combination finished as the first two (2) betting interests shall be winners, except if there are not any of those wagers, then;

(c) Individuals whose combination included either the first- or second-place finisher shall be winners, except if there are not any of those wagers on one (1) of the two (2) finishers, then;

(d) Individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers shall be winners, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Big Q wagers for that race.

(3) (a) In the first Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners.

(b) In the first Big Q race only, if there is a dead heat for first involving horses representing two (2) betting interests, the winning Big Q wagers shall be determined as if no dead heat occurred.

(c) In the first Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, individuals whose combination included any two (2) of the betting interests finishing in the dead heat shall be winners.

(4) In the first Big Q race only, if there is a dead heat for second, the winners shall be those who combined the first place finisher with any of the runners involved in the dead heat for second.

(5) In the second Big Q race only, the entire net Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose combination included either the first- or second-place finisher, except if there are not any of those wagers on one (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included one (1) of the covered betting interests included within the first two (2) finishers, except if there are not any of those wagers, then;

(e) As a single price pool to all exchange ticket holders for that race, except if there are not any of those wagers, then;

(f) In accordance with subsection (2) of this section.

(6) (a) In the second Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, the net Big Q pool shall be distributed to individuals selecting the mutual entry or mutual field combined with the next separate betting interest in the official order of finish.

(b) In the second Big Q race only, if there is a dead heat for first involving horses representing two (2) betting interests, the net Big Q pool shall be distributed as if no dead heat occurred.

(c) In the second Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two (2) of the betting interests finishing in the dead heat.

(7) In the second Big Q race only, if there is a dead heat for second involving horses representing two (2) or more betting interests, the Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then;

(e) As a single price pool to all exchange ticket holders for that race, except if there are not any of those tickets, then;

(f) In accordance with subsection (2) of this section.

(8) If a winning ticket for the first half of the Big Q is not presented for exchange prior to the close of betting on the second half Big Q race, the ticket holder shall forfeit all rights to any distribution of the Big Q pool resulting from the outcome of the second race.

(9) If a betting interest in the first half of the Big Q is scratched, the Big Q wagers including the scratched betting interest shall be refunded.

(10) (a) If a betting interest in the second half of the Big Q is scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Big Q race, the ticket holder shall forfeit all rights to the Big Q pool.

(11) If either of the Big Q races is cancelled prior to the first Big Q race, or the first Big Q race is declared "no contest," the entire Big Q pool shall be refunded on Big Q wagers for that race.

(12) If the second Big Q race is cancelled or declared "no contest" after the conclusion of the first Big Q race, the net Big Q pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Big Q race and all valid exchange tickets. If there are not any of those wagers, the net Big Q pool shall be distributed as described in subsection (2) of this section.

#### Section 14. Pick-(n) Pools.

(1) The Pick-(n) requires the selection of the first place finisher in each of (n)-specified races designated by the association and approved by the commission where (n) is any number of races greater than 2. Any changes to the Pick-(n) format shall be approved by the commission before implementation.

(2) The Pick-(n) pari-mutuel pool consists of amounts contributed for a win only selection in each of (n) races designated by the association. Each individual placing a Pick-(n) wager shall designate the winning horse in each of (n) races comprising the Pick-(n).

(3) The net Pick-(n) pool shall be apportioned in one the following methods based upon the official order of finish:

(a) Method 1, Pick-(n) with Carryover: The net Pick-(n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests; and the remainder shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(b) Method 2, Pick-(n) with 100 percent Carryover: The net Pick-(n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are no such wagers, then 100 percent of that day's net pool shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(c) Method 3, Pick-(n) with Minor Pool and Carryover: The major share of the net Pick-(n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick-(n) contests, the minor share of the net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests; and the major share shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one (1) of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(d) Method 4, Pick-(n) with No Minor Pool and No Carryover: The net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.

(e) Method 5, Pick-(n) with Minor Pool and No Carryover: The major share of the net Pick-(n) pool shall be distributed to those who selected the first place finisher in the greatest number of Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick-(n) contests, the minor share of the net Pick-(n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests. If the greatest number of first-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.

(f) Method 6, Pick-(n) with Minor Pool and No Carryover: The major share of net Pick-(n) pool shall be distributed to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick-(n) contests,

based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick-(n) contests, the entire net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick-(n) contests, the minor share of the net Pick-(n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests. If there are no winning wagers, the pool is refunded.

(g) Method 7, Pick-(n) with Carryover and "Unique Winning Ticket" Provision: The net Pick-(n) pool and carryover, if any, shall be distributed to the holder of a unique winning ticket that selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are multiple tickets selecting the first-place finisher in each of the Pick-(n) contest(s), a share that has been declared by the Association and approved by the commission, of the net Pick-(n) shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests and the remaining share shall be added to the carryover. If there are no tickets selecting the first-place finisher in each of the Pick-(n) contests, then; the entire net Pick-(n) pool shall be added to the carryover. Associations may suspend previously approved unique winning ticket wagering with the prior approval of the commission. Any carryover shall be held until the suspended unique winning ticket wagering is reinstated. Where there is no correct selection of the first-place finisher in at least one (1) of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool. In obtaining authorization for operating the Pick-(n) pool under this subsection, associations must clearly identify which definition under paragraph 16(b) will be relied upon for determining the existence of a unique winning ticket.

(4) If there is a dead heat for first place in any of the Pick-(n) races involving contestants representing the same betting interest, the Pick-(n) pool shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for first place in any of the Pick-(n) races involving contestants representing two (2) or more betting interests, the Pick-(n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(6) If a betting interest is scratched or is designated to run for purse money only from any leg of the Pick-(n), the association shall use the actual favorite, as evidenced by total amounts wagered in the Win pool at the host association, for the contest at the close of wagering on that contest, and shall be substituted for the betting interest that was scratched or designated to run for purse money only for all purposes, including pool calculations. In the event that the Win pool total for two (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalizer shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(7) If for any reason more than half of the races comprising the Pick-(n) are cancelled or declared a "no contest", and there was no previous carryover amount, wagering on the Pick-(n) shall be cancelled and all wagers shall be refunded.

(8) If for any reason more than half of the races comprising the Pick-(n) are cancelled or declared a "no contest", and a previous carryover amount existed, the carryover amount shall be frozen and added to the next scheduled Pick-(n) event. Wagering on the Pick-(n) for the cancelled Pick-(n) wager races shall be cancelled and all wagers shall be refunded.

(9) If the condition of the turf course warrants a change of racing surface in any races of the Pick-(n), and the change has not been disclosed to the public prior to "off time" of the first race of the Pick-(n), the stewards shall declare the changed races an "all win" race for Pick-(n) wagering purposes only. An "all win" race shall assign the winner of that race to each Pick-(n) ticket holder as their selection for that race.

(10) The Pick-(n) carryover may be capped at a designated

level approved by the commission so that if, at the close of any performance, the amount in the Pick-(n) carryover equals or exceeds the designated cap, the Pick-(n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Pick-(n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the Pick-(n) carryover, shall be distributed to those whose selection finished first in the greatest number of Pick-(n) contests for that performance.

(11) A written request for permission to distribute the Pick-(n) carryover on a specific performance may be submitted to the commission. The request must be for a specified date no greater than one (1) year from the date the request is submitted and contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(12) Should the Pick-(n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the Pick-(n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick-(n) contests. The Pick-(n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (8) of this rule.

(b) Upon written approval from the commission when there is a change in the carryover cap, a change from one (1) type of Pick-(n) wagering to another, or when the Pick-(n) is discontinued.

(c) On the closing performance of the meet or split meet.

(13) Notwithstanding subsections (10) and (12), if for any reason the Pick-(n) carryover must be held over to the corresponding Pick-(n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The Pick-(n) carryover plus accrued interest shall then be added to the net Pick-(n) pool of the following meet on a date and performance designated by the association and approved by the commission.

(14) With the written approval of the commission, the association may contribute to the Pick-(n) carryover a sum of money up to the amount of any designated cap.

(15) The association may suspend previously-approved Pick-(n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended Pick-(n) wagering is reinstated. An association may request approval of a Pick-(n) wager or separate wagering pool for specific performances.

(16) As it relates to any distribution method under section (2) which contains a unique winning ticket provision:

(a) A written request for permission to distribute the Pick-(n) unique winning ticket carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. Should the Pick-(n) unique winning ticket net pool and any applicable carryover be designated for distribution on a specified date and performance in which there is no unique winning ticket, the entire pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests.

(b) Associations must clearly identify which selection under clauses (i) and (ii) below will be relied upon for determining the existence of a unique winning ticket:

1. There is one (1) and only one (1) winning ticket that correctly selected the first place finisher in each of the Pick-(n) contests, based upon the official order of finish, to be verified by the unique serial number assigned by the tote company that issued the winning ticket; or

2. The total amount wagered on one (1) and only one (1) winning combination selecting the first-place finisher in each of the Pick-(n) contests, based up on the official order of finish, is equal to the minimum allowable wager.

(17) (a) Each association shall disclose in its license application whether it intends to schedule Pick-(n) races and, if so, shall disclose:



1. The percentage of the pool to be retained for the winning wagers, and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

3. Any changes to the Pick-(n) scheduling shall require prior approval from the commission or its designee.

(18) An association may request permission from the commission to distribute the Pick-(n) carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(19) Upon written approval of the commission, a sum of money up to the amount of any designated cap may be contributed to the Pick-(n) carryover by an association. The association may supply information to the general public regarding the winning dollars in the Pick-(n) pool. The information shall not be selectively distributed. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

#### Section 15. Twin Trifecta Pools.

(1) The Twin Trifecta requires the selection of the first three (3) finishers, in their exact order, in each of two (2) designated races.

(a) Each winning ticket for the first Twin Trifecta race shall be exchanged for a free ticket on the second Twin Trifecta race in order to remain eligible for the second half Twin Trifecta pool.

(b) The winning tickets may only be exchanged at attended ticket windows prior to the second Twin Trifecta race.

(c) Winning first half Twin Trifecta wagers shall receive both an exchange and a monetary payout.

(d) Both of the designated Twin Trifecta races shall be included in only one (1) Twin Trifecta pool.

(2) After wagering closes for the first half of the Twin Trifecta, and the takeout has been deducted from the pool, the net pool shall then be divided into two (2) separate pools: the first half Twin Trifecta pool and the second half Twin Trifecta pool.

(3) In the first Twin Trifecta race only, winning wagers shall be determined using the following precedence based upon the official order of finish for the first Twin Trifecta race:

(a) As a single price pool to individuals whose combination finished in the correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and Twin Trifecta wagering on the second half shall be cancelled.

(4) Except as set forth in subsection (16) of this section, if no first half Twin Trifecta ticket selects the first three (3) finishers of that race in exact order:

(a) Exchange tickets for the second half Twin Trifecta pool shall not be distributed; and

(b) The second half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.

(5) (a) Tickets from the first half of the Twin Trifecta that correctly select the first three (3) finishers shall be exchanged for tickets selecting the first three (3) finishers of the second half of the Twin Trifecta.

(b) The second half Twin Trifecta pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Twin Trifecta race:

1. As a single price pool, including any existing carryover monies, to individuals whose combination finished in correct sequence as the first three (3) betting interests except if there are not any of those wagers, then;

2. The entire second half Twin Trifecta pool for that race shall be added to any existing carryover monies and retained for the corresponding second half Twin Trifecta pool of the next consecutive performance.

(c) If a winning first half Twin Trifecta ticket is not presented for cashing and exchange prior to the second half Twin Trifecta race, the ticket holder may still collect the monetary value associated with the first half Twin Trifecta pool except the ticket holder shall forfeit all rights to any distribution of the second half Twin Trifecta pool.

(6) Mutuel entries and mutuel fields shall be prohibited in Twin Trifecta races.

(7) If a betting entry in the first half of the Twin Trifecta is scratched, Twin Trifecta wagers including the scratched betting interest shall be refunded.

(8) (a) If a betting interest in the second half of the Twin Trifecta is scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta race, the ticket holder shall forfeit all rights to the second half Twin Trifecta pool.

(9) If, due to a late scratch, the number of betting interests in the second half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first half winning tickets shall be entitled to the second half pool for that race, except they shall not be entitled to the Twin Trifecta carryover.

(10) (a) If there is a dead heat or multiple dead heats in either the first or second half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be winning wagers.

(b) If the dead heat occurs in the first half of the Twin Trifecta, the payout shall be calculated as a profit split.

(c) If the dead heat occurs in the second half of the Twin Trifecta, the payout shall be calculated as a single price pool.

(11) If the first Twin Trifecta race is canceled or declared "no contest", the entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and the second half shall be cancelled.

(12) (a) If the second half Twin Trifecta race is cancelled or declared "no contest", all exchange tickets and outstanding first half winning Twin Trifecta tickets shall be entitled to the net Twin Trifecta pool for that race as a single price pool, except they shall not be entitled to the Twin Trifecta carryover.

(b) If there are no outstanding first half winning Twin Trifecta tickets, the net Twin Trifecta pool shall be distributed as described in subsection (3) of this section.

(13)(a) The Twin Trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Twin Trifecta carryover equals or exceeds the designated cap, the Twin Trifecta carryover shall be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Twin Trifecta carryover is frozen, 100 percent of the net Twin Trifecta pool for each individual race shall be distributed to winners of the first half of the twin Trifecta pool.

(14) A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the commission. The request shall contain:

(a) Justification for the distribution;

(b) An explanation of the benefit to be derived; and

(c) The intended date and performance for the distribution.

(15) If the Twin Trifecta carryover is designated for distribution on a specified date and performance, the following precedence shall be followed in determining winning tickets for the second half of the Twin Trifecta after completion of the first half of the Twin Trifecta:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination

correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) As a single price pool to holders of valid exchange tickets, except if there are not any of those wagers, then;

(e) As a single price pool to holders of outstanding first half winning tickets.

(16) If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place finishers.

(b) If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, exchange tickets shall be issued for combinations correctly selecting only the first-place finisher.

(c) If there are no wagers selecting the first-place finisher only in the first half of the Twin Trifecta, all first half tickets shall be winning tickets and shall be entitled to 100 percent of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carryover.

(17) The Twin Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (14) of this section;

(b) Upon written approval from the commission if there is a change in the carryover cap or if the Twin Trifecta is discontinued; or

(c) On the closing performance of the meeting or split meeting.

(18) If, for any reason, the Twin Trifecta carryover shall be held over to the corresponding Twin Trifecta pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Twin Trifecta carryover plus accrued interest shall then be added to the second half Twin Trifecta pool of the following meeting on a date and performance so approved by the commission.

(19) Associations shall not provide information to any individual regarding covered combinations, the number of tickets sold, or the number of valid exchange tickets. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees from processing of pool data.

(20) (a) Each association shall disclose in its license application whether it intends to schedule Twin-Trifecta wagering and, if so, shall disclose:

1. The percentages of the net pool added to the first half pool and the second half pool; and

2. The amount of any cap to be set on the carryover.

(b) Any subsequent changes to the Twin Trifecta scheduling require prior approval from the commission or its designee.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31,

2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to the calculation of all pari-mutuel wagers placed on live wagers on races conducted in the Commonwealth.

(b) The necessity of this administrative regulation: This new administrative regulation is being promulgated as part of a comprehensive revision of the Kentucky Horse Racing Commission's regulatory scheme. This regulation is intended to replace previous regulations concerning the same subject matter which are being concurrently repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation establishes methods by which racing associations in the Commonwealth shall calculate payouts on winning pari-mutuel wagers on live horse races conducted in the Commonwealth. This will consolidate the wagering rules for all breeds into a single, uniform regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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 the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, all licensed participants in racing in the Commonwealth, all patrons who place pari-mutuel wagers on live horse races conducted in the Commonwealth, and the commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since all of the entities listed in Question 3 currently comply with previous versions of this administrative regulation, no action is expected to be required to comply with this new administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since the infrastructure is currently in place to comply with previous versions of this administrative regulation not additional costs are expected to be required.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Kentucky's seven currently-licensed racing associations, any applicant for a racing association license, all licensed participants in racing in the Commonwealth, all patrons who place pari-mutuel wagers on live horse races conducted in the Commonwealth, and the commission will benefit from the establishment of clearly defined regulatory guidelines concerning pari-mutuel wagering and the calculation and distribution of pools.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The total initial cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(b) On a continuing basis: The total ongoing costs would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Racing associations and advance deposit wagering licensees are currently required to pay an excise tax on the gross amount of money wagered on live and simulcast races for which the associations accept pari-mutuel wagers. A portion of this excise tax is used to pay for regulation. In addition, licensees are required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(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:

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission will be impacted by this administrative regulation and licensed thoroughbred and standardbred racing associations located in the Commonwealth of Kentucky and licensed advance deposit wagering companies operating in the Commonwealth.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 230.361.

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? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to revenues generated from this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to revenues generated from this administrative regulation.

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for

subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 7:010. Backside Improvement Fund.

RELATES TO: KRS 230.218

STATUTORY AUTHORITY: KRS 230.218(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.218(3) requires the Kentucky Horse Racing Commission to promulgate administrative regulations for using the backside improvement fund to promote, enhance, and improve the conditions of the backside of eligible racing associations in Kentucky.

Section 1. Definition. "Backside facilities" means those facilities located at thoroughbred horse racing associations in Kentucky where horses are stabled and quartered and where stable employees work and live.

Section 2. Limitations. All monies disbursed by the commission pursuant to KRS 230.218 shall be used solely for improvements to backside facilities.

#### Section 3. Application.

(1) An application for monies from the backside improvement fund shall:

(a) Be submitted to the main office of the commission; and

(b) Include the following:

1. A prioritized list of all proposed projects;

2. A full written and graphic description of each proposed project, with justification of the need for each;

3. An itemized cost estimate of each proposed project; and

4. Any contract in existence relating to the proposed improvements.

#### Section 4. Consideration and Determination.

(1) An application shall be approved or denied at either:

(a) The first regularly scheduled commission meeting that occurs after the application has been received; or

(b) At the second regularly scheduled commission meeting, if the application is received less than seven (7) calendar days before a regularly scheduled commission meeting.

(c) Approval of the application shall be based on the likelihood that the proposal will promote, enhance, and improve the conditions of the eligible backside facilities.

Section 5. Disbursements. All disbursements of monies and other transactions between the commission and the horse racing association involved shall be according to the terms and conditions of the project proposal as approved by the commission.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in

writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the eligibility requirements for receiving monies from the backside improvement fund to promote, enhance and improve the conditions of the backside of eligible racing associations in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth in KRS 230.218(3) "The Kentucky Horse Racing Commission shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section". Specifically, this regulation is necessary to establish the requirements for using the backside improvement fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.218.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for applications for and receiving monies from the backside improvement fund.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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 thoroughbred racing associations licensed and located in the Commonwealth of Kentucky; building maintenance and remodeling companies, retail hardware stores, and asphalt repair companies.

(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: Entities identified in (3) will not have to take additional action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3)? The racing associations will have improved backside facilities and other entities will receive increased business.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no cost associated with the implementation and enforcement of this administrative regulation. Funds collected under KRS 230.3615 are allocated to each association in the amount that was paid by that association to the backside improvement fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is not necessary to increase 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 administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this new administrative regulation will apply to all similarly situated entities in an equal manner.

## 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.218.

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? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Although specific dollar estimates cannot be determined, participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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 (+/-): Increase – No specific estimate

Expenditures (+/-): No impact

Other Explanation: This administrative regulation provides

eligibility requirements for accessing the backside improvement fund. As licensed thoroughbred racing associations continue to access the funds, individuals identified in the Regulatory Impact Analysis and Tiering Statement may receive an increase in revenue.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 7:020. Kentucky thoroughbred breeders' incentive fund.**

RELATES TO: KRS 230.215, 230.330, 230.800

STATUTORY AUTHORITY: KRS 230.215(2), 230.800(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(1) declares that it is the intent of the Commonwealth to foster and to encourage the horse breeding industry within the Commonwealth and to encourage the improvement of the breeds of horses. KRS 230.215(2) vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth. KRS 230.800 establishes the Kentucky Thoroughbred Breeders' Incentive Fund (KBIF). KRS 230.800(2)(b) requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the fund.

**Section 1. Definitions.**

(1) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins, excluding starter allowance races.

(2) "Claiming earnings" means the gross cash portion, as this portion is determined by The Jockey Club, of the prize awarded to a qualified Kentucky claiming horse that is paid from the association or the license holder permitted to conduct racing in the jurisdiction.

(3) "Claiming race" means a race in which every horse running in the race may be transferred in conformity with 810 KAR 4:050.

(4) "Grade I stakes race" means a nonrestricted race held in the United States that has been assigned Grade I stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(5) "Grade II stakes race" means a nonrestricted race held in the United States that has been assigned Grade II stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(6) "Grade III stakes race" means a nonrestricted race held in the United States that has been assigned Grade III stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(7) "Group I race" means:

(a) A nonrestricted race held in England, France, or Ireland that has been assigned Group I race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada that has been assigned Canadian Grade I stakes status for the year contested by the Canadian Graded Stakes Committee.

(8) "Group II race" means:

(a) A nonrestricted race held in England, France, or Ireland that has been assigned Group II race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada that has been assigned Canadian Grade II stakes status for the year contested by the Canadian Graded Stakes Committee.

(9) "Group III race" means:

(a) A nonrestricted race held in England, France, or Ireland that has been assigned Group III race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada that has been assigned Canadian Grade III stakes status for the year contested by the Canadian Graded Stakes Committee.

(10) "Intended breeder of record" means the owner or lessee of a thoroughbred mare who desires to use the mare for breeding purposes and to qualify the foal for the Kentucky Thoroughbred Breeders' Incentive Fund and who is listed as the intended breeder of record on the forms necessary to register under the KBIF.

(11) "KBIF" means the Kentucky Thoroughbred Breeders' Incentive Fund.

(12) "KBIF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders' Incentive Fund.

(13) "Kentucky sire" means a sire registered as a Kentucky Thoroughbred Development Fund sire.

(14) "Maiden special weight race" means a race in which:

(a) None of the runners have been declared a winner previously; and

(b) None of the runners are eligible to be claimed.

(15) "Overnight race" means a race for which entries close at a time set by the racing secretary.

(16) "Public auction" means a thoroughbred auction conducted by a recognized member of the Society of International Thoroughbred Auctioneers, or other similar public auction approved by the KBIF advisory committee.

(17) "Qualified breeder" means the breeder of record listed in The Jockey Club records.

(18) "Qualified Kentucky claiming horse" means a foal who is born out of a qualified mare and from a Kentucky sire, and who receives earnings from a claiming race in Kentucky.

(19) "Qualified mare" means a thoroughbred dam who resides in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the exceptions in Section 5(4) of this administrative regulation is met.

(20) "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire that is declared the official winner by the stewards and is not eligible to be claimed in that race.

(21) "Qualified winner's earnings" means the gross cash portion of the prize, as this portion is determined by The Jockey Club, awarded to the qualified winner of a race that is paid for from the association or the license holder permitted to conduct racing in the jurisdiction.

(22) "Starter allowance" means a race written to allow claiming horses who have improved from their earlier form to run in a nonclaiming event.

**Section 2. Timing of Awards; Eligibility.**

(1) Disbursements from the KBIF shall be made after December 31, but not later than March 31, for awards earned for the preceding calendar year.

(2) For a horse foaled prior to 2007, the breeder shall be eligible to receive funds from the Kentucky Thoroughbred Breeders' Incentive Fund, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund.

(3) For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(4) The races eligible for awards from the KBIF as provided in Sections 3 and 6 of this administrative regulation shall be those run on and after January 1, 2006.

**Section 3. Awards.**

(1) An incentive of \$50,000 shall be awarded to the qualified breeder of the qualified winner of:

(a) The Kentucky Derby; and

(b) The Kentucky Oaks.

(2) (a) An incentive shall be awarded to the twenty (20) horses with the most claiming wins in Kentucky each year.

(b) Horses earning awards at a Kentucky race track through any component other than the claiming component during the

same calendar year shall not be eligible for the Kentucky claiming component.

(c) An incentive of \$200,000 shall be distributed to the twenty (20) qualified Kentucky claiming horses with the most claiming wins in Kentucky, as follows:

1. \$20,000 to the horse with the most wins;
2. \$17,500 to the horse with the second most wins;
3. \$15,000 to the horse with the third most wins;
4. \$12,500 to the horse with the fourth most wins;
5. \$12,000 to the horse with the fifth most wins;
6. \$11,500 to the horse with the sixth most wins;
7. \$11,000 to the horse with the seventh most wins;
8. \$10,500 to the horse with the eighth most wins;
9. \$10,000 to the horse with the ninth most wins;
10. \$9,500 to the horse with the tenth most wins;
11. \$9,000 to the horse with the eleventh most wins;
12. \$8,500 to the horse with the twelfth most wins;
13. \$8,000 to the horse with the thirteenth most wins;
14. \$7,500 to the horse with the fourteenth most wins;
15. \$7,000 to the horse with the fifteenth most wins;
16. \$6,500 to the horse with the sixteenth most wins;
17. \$6,000 to the horse with the seventeenth, eighteenth,

nineteenth, and twentieth most wins.

(d) Claiming earnings earned at a Kentucky race track from the same calendar year shall be used to settle any ties.

(e) If two (2) or more horses have the same number of wins and the same total earnings, all incentive totals to which those horses would have been entitled shall be divided equally between or among them.

(3) (a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$3,000.

(4) (a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in Kentucky.

(b) The incentive shall be that amount that is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$3,000.

(5) (a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount that is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$4,000.

(6) (a) An incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in Kentucky.

(b) The incentive shall be that amount that is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$4,000.

(7) (a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade I stakes race held in the United States;
2. Group 1 race held in Canada, England, France, and Ireland; and
3. Group I race held on Dubai World Cup day, Japan Cup day, and Hong Kong International day.

(b) The incentive shall be \$7,500.

(8) (a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade II and Grade III stakes race held in the United States; and
2. Group 2 and Group 3 race held in Canada, England, France, and Ireland.

(b) The incentive shall be \$5,000.

(9) An incentive shall not be awarded to the winner of any

Breeders' Cup World Championship race.

#### Section 4. Registration of Foals.

(1) (a) For a horse foaled on or before December 31, 2006 and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file a "Kentucky Thoroughbred Breeders' Incentive Fund Application for Award Form", KHRC 7-020-7, with the commission.

(b) The Kentucky Thoroughbred Breeders' Incentive Fund Application for Award form shall be filed no later than December 31 of the year following the year in which the horse has raced in a race that would qualify the horse for an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars shall be deducted from the award amount.

(d) The filing fee shall be assessed one (1) time per horse.

(2) For a horse foaled on or after January 1, 2007, the intended breeder of record shall register the unborn foal with the commission on or prior to August 15 of the cover year by filing the "Kentucky Thoroughbred Breeders' Incentive Fund Application for Mare Registration Form", KHRC 7-020-1, and paying a filing fee of sixty (60) dollars, except as provided in subsection (5) of this section.

(3) (a) The commission shall be recognized and designated as the sole official registrar of the KBIF for the purposes of registering Kentucky thoroughbred foals in accordance with this administrative regulation.

(b) The records of The Jockey Club shall be used as the official records of the commission for purposes of this regulation to determine the following information:

1. The identity of the qualified breeder;
2. The claiming wins and earnings for each race;
3. The qualified winners' earnings for each race;
4. The name of the qualified winner for each race;
5. The name of each horse determined to be a qualified

Kentucky claiming horse;

6. The registration number or special identification number of the KBIF registered horse;

7. The name of the KBIF registered horse; and

8. Other information for purposes of administering the KBIF.

(4) If the information on a form required under this section is found to be incorrect or becomes incorrect or changes, the person considered to be the intended breeder of record shall file an amended form with the commission to correct the information.

(5) (a) The Commission may accept a late filing if the intended breeder of record can prove that the foal otherwise met the eligibility requirements to be a KBIF registered horse. The late filing shall be made on the "Kentucky Thoroughbred Breeders' Incentive Fund Application for Late Mare Registration Form", KHRC 7-020-6.

(b) The amount of the late filing fee shall be:

1. \$150 for a filing made after August 15 of the cover year and on or prior to December 31 of the cover year;
2. \$750 for a filing made between January 1 and December 31 of the weanling year; and
3. \$1,500 for a filing made between January 1 and December 31 of the yearling year.

(6) (a) The commission may accept a special filing if a pregnant mare is purchased at public auction outside Kentucky and:

1. The mare resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire to the time of foaling;
2. The mare returned to Kentucky within fourteen (14) days of the conclusion of the auction; and
3. The foal meets all of the other eligibility requirements to be a KBIF registered horse.

(b) The special filing shall be made on the "Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration Form", KHRC 7-020-8.

(c) The amount of the special filing fee shall be:

1. \$300 for a filing made between January 1 and December 31 of the cover year;
2. \$1,500 for a filing made between January 1 and December 31 of the weanling year; and



3. \$3,000 for a filing made between January 1 and December 31 of the yearling year.

(7) If ownership of a mare is transferred, a "Kentucky Thoroughbred Breeders' Incentive Fund Mare Transfer Form", KHRC 7-020-2, shall be filed with the commission.

(8) If any registration or nomination deadline imposed by this administrative regulation falls on a weekend or holiday, the deadline shall be moved to the next business day following the original deadline.

#### Section 5. Qualification of Foal and Qualified Mare.

(1) The commission may inspect where the mare proposed to be a qualified mare is boarded or request and obtain records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be registered proves to the satisfaction of the commission:

(a) The failure to comply was insignificant with respect to the registration requirements as a whole; and

(b) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this administrative regulation.

(4) For the thoroughbred dam to be a qualified mare, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the following exceptions is met:

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the breeder desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner or the lessee of the mare files a "Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky Form", KHRC 7-020-4, no later than fourteen (14) days after the mare leaves Kentucky and provides information relating to the procedure;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky; and

5. The mare is in Kentucky for foaling as established by documentation provided to the commission;

(b) Training.

1. The mare has not yet delivered her first foal and is in active training outside Kentucky;

2. The owner or the lessee of the mare files a "Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky Form", KHRC 7-020-4, at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the training outside of Kentucky;

3. The executive director of the commission approves the departure of the mare from Kentucky; and

4. The mare is in Kentucky for foaling as established by documentation provided to the commission; or

(c) Public auction.

1. The owner of the mare desires to enter her for sale at a public auction held outside of Kentucky;

2. The owner of the mare files with the commission a "Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky Form", KHRC 7-020-4, at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the auction;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare returns to Kentucky within fourteen (14) days after the conclusion of the auction; and

5. The mare is in Kentucky for foaling as established by documentation provided to the commission.

(5) The executive director shall notify the commission if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:

(a) The registration and records of the KBIF registered horse; and

(b) Complying with the requirements of the Kentucky Thoroughbred Breeders' Incentive Fund.

(7) The owner or lessee of the mare may withdraw the mare's foal from the KBIF by filing a "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal Form", KHRC 7-020-5.

#### Section 6. Shortfall and Bonus Calculation.

(1) If, at the close of any calendar year, inadequate funding is available in the KBIF to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased proportionally among all awards, excluding the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award, until funding is adequate to fund all awards.

(2) (a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBIF in an amount that is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains at least \$5,000,000 when the excess funding is available.

(3) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be increased proportionally among all awards except the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award.

#### Section 7. Application Requirements.

(1) The amount due for awards shall be calculated after the end of each calendar year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled according to the last known address on file with the KBIF.

(2)(a) After receipt of notification of an award, each potential recipient shall return an application for the award on the "Kentucky Thoroughbred Breeders' Incentive Fund Application for Award Form", KHRC 7-020-7, certifying that the applicant is entitled to the award and certifies the applicant's United States taxpayer ID number or Social Security number.

(b) A breeder may appoint an authorized agent to complete the application by filing with the commission a "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRC 7-020-3.

(3) (a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall lapse to the KBIF for distribution or building the reserve in the following year.

(b) Failure to submit the application by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall result in forfeiture of the award and the award money shall lapse to the KBIF for distribution or building the reserve in the following year.

#### Section 8. Advisory Committee.

(1) The commission may establish an advisory committee to

assist in administering the KBIF.

(2) If established, the advisory committee shall consist of five (5) members appointed by the chairman of the commission by July 1 of each year. Each member of the advisory committee shall:

(a) Serve from July 1 through June 30 of the following year; and

(b) Be a resident of Kentucky.

(3) The advisory committee shall select a chairman from its membership annually.

#### Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Mare Registration Form", KHRC 7-020-1;

(b) "Kentucky Thoroughbred Breeders' Incentive Fund Mare Transfer Form", KHRC 7-020-2;

(c) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRC 7-020-3;

(d) "Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky Form", KHRC 7-020-4;

(e) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal Form", KHRC 7-020-5;

(f) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Late Mare Registration Form", KHRC 7-020-6;

(g) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Award Form", KHRC 7-020-7; and

(h) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration Form", KHRC 7-020-8.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the Kentucky Thoroughbred

Breeders' Incentive Fund (the "Fund").

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient administration of the Fund and to provide notice to participants regarding registration and eligibility standards and the rules that govern distribution of moneys from the fund. While this is a new regulation, it replaces 810 KAR 1:070.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.800(2)(b) requires the commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund." This regulation fulfills that statutory mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.800(2)(a) states, "The Kentucky Horse Racing Commission shall use moneys deposited in the Kentucky thoroughbred breeders incentive fund to administer the fund and provide rewards for breeders of horses bred and foaled in Kentucky." This regulation sets forth the eligibility criteria for participation in the Fund as well as the rules for distribution of rewards. It puts participants on notice of the deadlines with which they must comply and establishes procedures for resolving disputes. It also provides disciplinary measures for participants who violate the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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 regulation affects thoroughbred breeders, boarding farm owners and employees, Kentucky veterinarians and equine health care facilities, horse transportation companies, farriers, farmers and suppliers of hay, feed and grain, equine supply companies providing medical sales, daily maintenance care and tack, Kentucky thoroughbred sale companies, equine tourism generating state/local room tax for lodging, gasoline tax on travel and transportation of horses, farm equipment retail stores, state and local payroll tax generated by the above businesses.

(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 updates the title number and references within the regulation. All entities identified in (3) will not require any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with the administrative regulation. Rather, this administrative regulation simply updates the title number and references within.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, Kentucky's thoroughbred breeders and owners and persons providing services related to thoroughbred horses will receive incentive funds, directly or indirectly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: The nomination fees are used for the implementation and enforcement of this regulation. This administrative regulation does not change the nomination fees and the source of funding remains the same. 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 will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.800.

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? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Although specific dollar estimates cannot be determined, continued growth and participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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. This administrative regulation requires mares to be bred to a Kentucky stallion and reside in Kentucky for the entire gestation of the pregnancy in order for the resulting foal to be eligible to receive distributions from the fund. This requirement provides economic support to all businesses and individuals who provide services necessary for the breeding and racing of thoroughbred horses. See Regulatory Impact Analysis and Tiering Statement, Section (3).

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None.

#### PUBLIC PROTECTION CABINET KENTUCKY HORSE RACING COMMISSION (New Administrative Regulation)

#### 810 KAR 7:030. Kentucky Thoroughbred Development Fund.

RELATES TO: KRS 138.510, 230.215, 230.225(5)(c), 230.400

STATUTORY AUTHORITY: KRS 230.215(2), 230.400

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215(1) declares that it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane. KRS 230.215(2) vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth and to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality. KRS 230.225(5)(c) states that the racing commission shall be responsible for recommending tax incentives and implementing incentive programs to ensure the strength and growth of the equine industry. KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund.

#### Section 1. Definitions.

(1) "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar.

(2) "Historical horse race handle" means monies wagered at a licensed Kentucky association on historical horse races as defined in 810 KAR 2:001.

(3) "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted outside of Kentucky.

(4) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.

(5) "KTDF" means the Kentucky Thoroughbred Development Fund.

(6) "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc.

(7) "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.

(8) "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.

(9) "Official Registrar" means the association recognized and designated as the sole official registrar of the KTDF for the purpose of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accordance with KRS 230.400.

#### Section 2. KTDF Monies Earned.

(1) One (1) live thoroughbred association.

(a) Live racing handle. An association conducting live racing shall earn KTDF money in the amount of 0.75 percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn KTDF money in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as provided by this subsection.

(a) The association conducting the live racing shall earn KTDF money in the amount of seventy-five hundredths (0.75) percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) Intra-state wagering monies shall be allocated to that Kentucky thoroughbred association on which the wagering is placed for purposes of calculating that association's KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that association's KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

(3) Historical horse race handle. An association offering wagering on historical horse races shall earn KTDF money as provided by KRS 138.510(1).

(4) Unless otherwise stated, all KTDF money earned under this section shall be deposited in the KTDF account for that association.

#### Section 3. KTDF Reconciliation.

(1) Each association shall file with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the commission the actual KTDF purse distribution within fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission shall reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits on a monthly basis.

(4) If at the close of a live race meet, an association has a balance of monies earned for that meet that has not been distributed in actual KTDF purse distribution, then the association may choose one of the following options to distribute the remaining balance, subject to the recommendation of the KTDF Advisory Committee and the approval of the commission:

(a) Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) If at the close of a live race meet, an association offering wagering on historical horse races has a balance of KTDF monies earned from historical horse race wagers that has not been distributed in actual KTDF purse distribution, then the association may distribute a portion of the balance, subject to the recommendation of the KTDF Advisory Committee and the approval of the commission:

(a) To supplement purses at future live racing meets held by that association;

(b) To supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations; or

(c) To supplement purses at another licensed thoroughbred Kentucky racetrack.

(6) Reasonable and customary administrative charges for time spent reconciling the KTDF account may be charged by the commission to each association based on the percentage of funds generated by each association for the previous calendar year.

(7) An association, at its option, may pay advertising charges billed to the association by the KTOB from the association's KTDF available balance.

(8) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to the reimbursement of any KTDF funds.

Section 4. Purse Structure. Each association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the

commission whether or not to approve the proposed purse structure based upon the best interests of Kentucky racing.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund ("KTDF").

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority set forth in KRS 230.400(7). Specifically, this regulation is necessary to establish the eligibility requirements for those desiring to receive distributions from the KTDF. While this is a new administrative regulation, it replaces 810 KAR 1:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.400(7).

(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 mandates in KRS 230.400.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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 regulation affects Kentucky's licensed racing associations that offer thoroughbred racing and purse supplements, owners of Kentucky-bred thoroughbreds, farm owners and employees, Kentucky veterinarians and equine health care facilities, horse transportation companies, farriers, farmers and suppliers of hay, feed and grain, equine supply companies providing medical sales, daily maintenance care and tack,

Kentucky thoroughbred sale companies, equine tourism generating state/local room tax for lodging, gasoline tax on travel and transportation of horses, farm equipment retail stores, state and local payroll tax generated by the above businesses.

(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 updates the chapter number and references within the regulation. All entities identified in (3) will not require any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, Kentucky thorough bred owners and breeders, and persons providing services related to thoroughbred horse will receive direct and indirect economic benefits from added purse money.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no increased cost. The KTDf is funded by the pari-mutuel tax established in KRS 138.510.

(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 establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.400(7).

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? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Although specific dollar estimates cannot be determined,

continued growth and participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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. This administrative regulation establishes eligibility for Kentucky-bred horses to race for supplemental purse money at licensed Kentucky racetracks. This requirement provides economic support to all businesses and individuals who provide services necessary for the breeding, owning and racing of thoroughbred horses. See Regulatory Impact Analysis and Tiering Statement, Section (3).

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 7:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

#### Section 1. Definitions.

(1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as set forth in section 8 of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.

(3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire Stakes Program.

(4) "Kentucky-bred" means, for the purposes of this administrative regulation, a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky as provided in this

administrative regulation; or

(b) Sired by a standardbred stallion residing in Kentucky that meets the requirements of this administrative regulation.

(5) "Kentucky Sire Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(6) "KSBI" means the Kentucky Standardbred Breeders' Incentive Fund as established in KRS 230.802.

(7) "KSDF" means the Kentucky Standardbred Development Fund as established in KRS 230.770.

(8) "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside Kentucky during the calendar year in which the stallion is registered.

(9) "USTA" means the United States Trotting Association.

#### Section 2. Domicile Requirements.

(1) (a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion to breed and to have his progeny eligible for the KSDF or KSBI shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Stallion Certificate of Eligibility Form", KHRC 7-040-2.

(b) Standardbred stallions not residing in Kentucky are not required to register with the commission. The progeny of a standardbred stallion not residing in Kentucky is not eligible for the KSDF or KSBI unless the progeny is that of a standardbred mare registered under and meeting the requirements of this regulation.

(c) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(2) (a) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBI shall register the mare by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Mare Certificate of Eligibility Form", KHRC 7-040-3.

(b) To be eligible for registration, the mare shall:

1. Be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency; and

2. Have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(c) If a horse is conceived by embryo and ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(3) Registrations shall be received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(4) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBI shall be responsible for:

(a) The registrations and records of the farm where the stallion stands or the mare resides; and

(b) Complying with all applicable requirements of this administrative regulation.

#### Section 3. Eligibility.

(1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBI.

(2) (a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo and ovum transplant (ET), shall be eligible for the

Kentucky Sire Stakes.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for the Kentucky Sire Stakes.

Section 4. Distance. Each Kentucky Sire Stakes race shall be a one (1) mile dash.

Section 5. Post Positions. Post positions for the final, consolation and all preliminary legs of the Kentucky Sire Stakes race shall be an open draw with two (2) horses drawn for the final and consolation races that are designated as "also eligibles" under Section 6(6) of this administrative regulation.

#### Section 6. Eligibility for the Final and Consolation Races.

(1) Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(2) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with the top eight (8) point earners, if the horses raced on a half (1/2) mile track or five-eighths (5/8) mile track, or top ten (10) point earners, if the horses raced on a one (1) mile track, to be declared eligible.

(b) On a half (1/2) mile track or five-eighths (5/8) mile track, the top eight (8) point earners are not eligible for the consolation. On a one (1) mile track, the top ten (10) point earners are not eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses shall be declared for a consolation race to be contested.

(h) A horse that is automatically eligible to race in the final race shall not start in the consolation race.

(3) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (2) of this section and toward determining tiebreaker status as set forth in subsection (6)(b) of this section.

(4) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (2) of this section.

(5) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(6) (a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBI or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;

2. 2nd place - twenty-five (25) points;

3. 3rd place - twelve (12) points;

4. 4th place - eight (8) points;

5. 5th place - five (5) points;

6. 6th place and all other starters - one (1) point; and

7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not



declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(7) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (6) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 7. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 8. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 9. Number of Starters.

(1) There shall not be more than:

(a) Ten (10) starters in each final race on a one (1) mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 10. Declaration Fees.

(1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of \$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

(a) Nominating fees;

(b) Sustaining fees;

(c) Declaration fees; and

(d) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sire Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;

3. The host racetrack; and

4. Two (2) participants in the fund nominated by the chairman of the commission from a group of up to six (6) nominees recommended by each of the above three (3) members having two (1) nominations each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 11. Divisions of Preliminary Legs.

(1) The total number of horses entered shall determine the

number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.

5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.

6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.

2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.

3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.

5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.

6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

(c) If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 12. Gait.

(1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2) Change of gait:

(a) May be made at the time of declaration at the track; and

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 13. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt, gelding, ridgeling divisions; and

(2) Filly divisions.

Section 14. Purse Distributions.

(1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;

(d) Two (2) starters - fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and

(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

(3) In addition to the purses set forth in subsection (1) of this section, \$25,000 shall be awarded in each division of the finals to the owner of the stallion or stallions residing in Kentucky that sired the first, second, or third place finisher, as follows:

(a) First place: \$15,000;

(b) Second place: \$7,500; and

(c) Third place: \$2,500.

Section 15. Cancellations.

(1) If circumstances prevent the racing of an event and the race is not drawn, all funds allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 22 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 12(4) of this administrative regulation.

#### Section 16. Qualifying.

(1) Any horse declared into a Kentucky Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in two minutes and six seconds (2:06) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and four seconds (2:04) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and two seconds (2:02) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and zero seconds (2:00) or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and seven seconds (2:07) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and five seconds (2:05) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and three seconds (2:03) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and one second (2:01) or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and eight seconds (2:08) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and six seconds (2:06) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and four seconds (2:04) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and two seconds (2:02) or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

#### Section 17. Purse Allocations.

(1) At a scheduled meeting of the commission, the commission shall:

(a) Establish the distribution of funds for stakes races for the upcoming year; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 18. Promotions. The KSDF or KSBIF shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

#### Section 19. Nomination Fees.

(1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

(3) Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

#### Section 20. Nomination Schedule.

(1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars per yearling.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.

(5) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	\$300
April 15	\$300
May 15	\$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	

(b) THREE (3) YEAR OLD PAYMENTS	
February 15	\$300
March 15	\$300
April 15	\$300

Section 21. Early Closing Events. The commission may provide for separate early closing events for Kentucky-bred horses.

#### Section 22. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1;

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2; and

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the conditions under which Standardbred racing shall be conducted in Kentucky. Specifically, KRS 230.770(6) authorizes the commission to promulgate regulations establishing eligibility requirements for horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund ("KSDF/KSBIF"). This regulation establishes the eligibility requirements to receive distributions from the KSDF/KSBIF.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth in KRS 230.215(2) to "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth of Kentucky" and the statutory authority set forth in KRS 230.240(1). Specifically, this regulation is necessary to establish the eligibility requirements for those desiring to receive distributions from the KSDF/KSBIF. While this is a new regulation, it replaces 811 KAR 1:215.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.215(2), 230.240(1), 230.260(8), 230.770(1), (6), (7), and KRS 230.802(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by referencing the new title and repealing 811 KAR 1:215.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation updates the title number and references within.

(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; standardbred breeders; standardbred owners; boarding farm owners and employees; Kentucky veterinarians and equine healthcare facilities; horse transportation companies; farriers; farmers and suppliers of hay, feed and grain; equine supply companies; daily maintenance care and tack; Kentucky standardbred sale companies; retail stores and maintenance services; and state and local payroll tax.

(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 updates the title number and references within the regulation and removes the notary requirements on the forms incorporated by reference. All entities identified in (3) will not require any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, Kentucky standardbred owners and breeders, and persons providing services related to standardbred horses will receive direct and indirect economic benefits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The nomination fees are used for the implementation and enforcement of this regulation. This administrative regulation does not change the nomination fees and the source of funding remains the same. 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 will be necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate. This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b).

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? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Although specific dollar estimates cannot be determined, continued growth and participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement,

Section (3).

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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. This administrative regulation requires mares and stallions to reside in Kentucky for 180 days during the year of conception in order for the resulting foal to be eligible to receive distributions from the fund. This requirement provides economic support to all businesses and individuals who provide services necessary for the breeding and racing of standardbred horses. See Regulatory Impact Analysis and Tiering Statement, Section (3).

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 7:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund.**

RELATES TO: KRS 138.510, 230.215, 230.225, 230.443, 230.445

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.445

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215 and 230.260 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.445 establishes the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky; upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of purses and payments in these races.

**Section 1. Definitions.**

(1) "Broodmare" means a mare that conceives and carries her genetic foal to term.

(2) "Donor mare" means the mare from which an embryo is harvested for the purpose of performing an embryo transfer.

(3) "Fund" means the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund established by KRS 230.445.

(4) "Historical horse race handle" means monies wagered at a licensed Kentucky association on historical horse races as defined in 810 KAR 2:001.

(5) "Inter-state wagering" means monies wagered at a Kentucky racing association on Quarter Horse, Paint Horse, Appaloosa, or Arabian races conducted outside of Kentucky.

(6) "Intra-state wagering" means monies wagered at a Kentucky racing association on Quarter Horse, Paint Horse, Appaloosa, or Arabian races conducted at another Kentucky association.

(7) "Kentucky bred" means a horse that meets the requirements of this administrative regulation and is:

(a) A Quarter Horse registered with the American Quarter Horse Association, or its successor;

(b) An Appaloosa registered with the Appaloosa Horse Club, or its successor;

(c) An Arabian registered with the Arabian Horse Association Registry, or its successor; or

(d) A Paint Horse registered with the American Paint Horse Association, or its successor.

(8) "Live racing handle" means the monies wagered by individuals present on association grounds on Quarter Horse, Paint Horse, Appaloosa, or Arabian races physically conducted on that association's grounds.

(9) "Mare" means a broodmare, donor mare, or recipient mare.

(10) "Nonlive racing handle" means the monies wagered at an association located in Kentucky on Quarter Horse, Paint Horse, Appaloosa, or Arabian races not physically conducted on that association's grounds.

(11) "Recipient mare" means a mare of any breed who:

(a) Is implanted with an embryo from a donor mare;

(b) Carries the non-genetic foal to term; and

(c) Is implanted with an electronic horse identification microchip that accurately identifies the horse and is compliant with international standards ISO 11784.

Section 2. Advisory Committee. The fund advisory committee shall consist of five (5) members, all of whom shall be Kentucky residents, to be appointed by the chairman of the commission by July 1 of each year. The committee shall consist of the following:

(1) One (1) member of the commission;

(2) One (1) officer or director of a licensed racing association in Kentucky conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian racing;

(3) One (1) owner of a horse nominated to the fund;

(4) One (1) owner of a mare registered with the fund; and

(5) One (1) member of the Kentucky Quarter Horse Racing Association recommended by that organization's board of directors.

**Section 3. Mare Eligibility.**

(1) In order for a foal to be eligible to earn money from the fund, the broodmare or both the donor and recipient mares shall be registered with the fund on or before February 15 of the year of conception. Late registration may be accepted on or before June 15 of the year of conception as provided by subsection (4) of this section.

(2) In order to be eligible to be registered with the fund, a mare, whether a broodmare, donor mare, or recipient mare, shall reside in Kentucky continuously from conception or embryo transfer implantation until foaling unless one (1) of the exceptions established in this subsection is met.

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the owner of the mare desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner of the mare files with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky", KHRC 7-060-3, within fourteen (14) days after the mare leaves Kentucky and provides information related to the procedure as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky, other than the time during which she is traveling to and from Kentucky;

5. The mare returns to Kentucky following the medical procedure for which her departure was authorized; and

6. The mare is in Kentucky for foaling, as established by documentation provided to the commission;

(b) Racing.

1. The owner of the mare desires to race the mare in a pari-mutuel race that is:

a. Held outside Kentucky; and

b. Sanctioned by the governing body of the jurisdiction in which the race is to be held;

2. The owner of the mare files with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky", KHRC 7-060-3, at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the race outside of Kentucky as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare returns to Kentucky within ten (10) days after the running of the approved race; and

5. The mare is in Kentucky for foaling as established by documentation provided to the commission; or

(c) Auction.

1. The owner of the mare desires to enter her for sale at a catalogued auction for her breed held outside of Kentucky;

2. The owner of the mare files with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky", KHRC 7-060-3, at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the auction as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare returns to Kentucky no later than thirty (30) days after the auction; and

5. The mare is in Kentucky for foaling, as established by documentation provided to the commission.

(3) The owner of a mare approved to leave the state under subsection (2) of this section shall provide the commission with written notification of the mare's return within forty-eight (48) hours of her return.

(4) A mare shall be registered with the fund by:

(a) Completing and filing with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Mare Registration Form", KHRC 7-060-1;

(b) Providing the commission with a photocopy of the mare's official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, the Arabian Horse Association Registry, or The Jockey Club or their respective successors, or documentation regarding a recipient mare's electronic horse identification microchip; and

(c) Paying the registration fee as follows:

1. A twenty-five (25) dollar fee for registrations postmarked no later than February 15 of the year of conception; or

2. A \$200 late fee for registrations postmarked after February 15 and no later than June 15 of the year of conception.

#### Section 4. Nomination.

(1) Except as set forth in subsection (5) of this section, in order for a horse to be eligible to earn money from the fund, it shall be a Kentucky bred as defined in this administrative regulation and shall be nominated to the fund on or before December 31 of its yearling year by:

(a) Completing and filing with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form", KHRC 7-060-2;

(b) Providing the commission with a photocopy of the horse's official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, or the Arabian Horse Association Registry, or their respective successors; and

(c) Paying the nomination fee as follows:

1. A twenty-five (25) dollar fee for nominations postmarked no later than December 31 of the weanling year; or

2. A \$100 fee for nominations postmarked after the weanling year but no later than December 31 of the yearling year.

(2) Except as provided in subsection (5) of this section, nominations postmarked after December 31 of the yearling year shall not be accepted.

(3) In order for a foal that is the product of an embryo transfer to be eligible to earn monies from the fund, the donor mare and the

recipient mare shall be registered as provided in Section 3 of this administrative regulation and shall meet the other requirements of this administrative regulation.

(4) If a registered donor mare produces more than one (1) foal in one (1) breeding season, two (2) genetic foals may be nominated to the fund as determined by the owner of the donor mare.

(5) A horse born before 2017 shall be eligible for nomination to the fund and participating in races offering monies from the fund. A horse shall be nominated by:

(a) Completing and filing with the commission a "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form", KHRC 7-060-2;

(b) Paying a nomination fee of \$300; and

(c) Including the following with the nomination form:

1. A photocopy of the official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, or the Arabian Horse Association Registry, or their respective successors;

2. Registration papers showing ownership and demonstrating that the horse was foaled in Kentucky;

3. An official breed registry shipped semen report or a stallion breeders certificate demonstrating that the horse was conceived in Kentucky; and

4. A signed affidavit from the owner of the mare at the time of her pregnancy stating that the mare resided in Kentucky during the entirety of her pregnancy.

(6) Nothing in this section shall prevent a registered mare from being eligible to race for monies from the fund.

#### Section 5. Monies Earned.

(1) One (1) live association.

(a) Live racing handle. An association conducting live racing shall earn monies to be deposited in the fund account for that association in the amount of one (1) percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn monies to be deposited in the fund account for that association in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live association. Unless there is a commission approved agreement among the associations conducting live racing to the contrary, if two (2) or more associations are conducting live Quarter Horse, Paint Horse, Appaloosa, or Arabian races on the same day, the monies earned from the handle for that day shall be divided as established in this subsection.

(a) Live racing handle. An association conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian races shall earn monies to be deposited in the fund account for that association in the amount of one (1) percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) The intra-state wagering monies shall be allocated to that association on which the wagering is placed for purposes of calculating that association's fund earnings.

(c) Inter-state wagering monies originating from an association conducting live Quarter Horse, Paint Horse, Appaloosa, or Arabian races shall be allocated to that association for purposes of calculating that association's fund earnings.

(d) Inter-state wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live races.

(3) Historical horse race handle. An association offering wagering on historical horse races shall earn monies to be deposited in the fund account for that association as provided in KRS 138.510(1).

#### Section 6. Distribution of Funds.

(1) Each association shall submit a request to the advisory committee, including the proposed races eligible to receive monies from the fund and the proposed purse structure for those races, at least forty-five (45) days prior to the opening day of the live racing meet.



(2) Unless there is a commission approved proposal to the contrary, the proposed purse structure shall not exceed the total dollars generated by that breed to the association's fund account.

(3) The advisory committee shall review the proposed eligible races and purse structure and make a recommendation whether to approve the proposed races and purse structure to the commission based upon the best interests of Kentucky racing.

(4) Two (2) or more associations conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian racing may request permission from the advisory committee to combine their respective fund monies to supplement purses at one (1) of the associations. The advisory committee shall recommend to the commission whether to approve the request.

#### Section 7. Reconciliation.

(1) Each association shall file weekly with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report.

(2) Each association shall report to the commission the actual purse distribution within fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If, at the close of a live race meet, an association has a balance of monies earned for that meet that has not been distributed in actual fund purse distribution, then the association may choose one (1) of the following options to distribute the remaining balance, subject to the recommendation of the advisory committee and the approval of the commission:

(a) Use fund monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use fund monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) If, at the close of a live race meet, an association offering wagering on historical horse races has a balance of fund monies earned from historical horse race wagers that has not been distributed in actual fund purse distribution, then the association may choose one (1) of the following options to distribute a portion of the balance, subject to the recommendation of the advisory committee and the approval of the commission:

(a) Use the historical horse race fund monies previously earned to supplement purses at future live racing meets held by that association;

(b) Use historical horse race fund monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations; or

(c) Use historical horse race fund monies previously earned to supplement purses at another licensed Kentucky racetrack.

(6) Reasonable and customary administrative charges for time spent reconciling the account may be charged to each association by the commission based on the percentage of funds generated by each association for the previous calendar year.

(7) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement of any funds.

#### Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Mare Registration Form", KHRC 7-060-1;

(b) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form", KHRC 7-060-2; and

(c) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky Form", KHRC 7-060-3.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington,

Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the rules governing eligibility for participation in the Kentucky Quarter Horse, Paint Horse, Appaloosa and Arabian Development Fund (the "Fund") and the administration of the Fund.

(b) The necessity of this administrative regulation: KRS 230.445 requires the Kentucky Horse Racing Commission ("KHRC") to promulgate administrative regulations regarding eligibility for participation in the Fund and the administration of the Fund. This regulation fulfills that statutory mandate. While this is a new regulation, it replaces 811 KAR 2:190.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.445(2) establishes the Fund and requires the KHRC to "use the development fund to promote races and provide purses for races for horses bred and foaled in the Commonwealth" and to "provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed tracks within Kentucky conducting quarter horse, paint horse, Appaloosa, or Arabian horse racing." This regulation establishes eligibility standards, administrative practices to enforce the standards and the administration of payments from the Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specific rules for eligibility to earn monies from the Fund, conditions for races with purses supplemented by monies from the Fund, and the distribution of monies from the Fund.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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 those persons who breed and race Quarter Horses, Paint Horses, Appaloosas and Arabians in conformity with the requirements of the regulation, boarding farm owners and employees; Kentucky veterinarians and equine healthcare facilities; horse transportation companies; farriers; farmers and suppliers of hay, feed and grain; equine supply companies; daily maintenance care and tack; retail stores; and state and local payroll tax.

(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 updates the title & chapter number(s) and references within the regulation. All entities identified in (3) will not require any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, the entities identified in question (3) will receive direct and indirect financial benefits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be funded out of the Fund pursuant to KRS 230.445(4)(b). 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 will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.445.

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? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed

upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Although specific dollar estimates cannot be determined, continued growth and participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? Currently, there is very little Quarter Horse and Arabian racing in the Commonwealth and no Paint Horse or Appaloosa racing. However, if the number of participants increases, there will be a corresponding increase in the costs associated with administering the Fund.

(d) How much will it cost to administer this program for subsequent years? See answer to 4(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation requires mares to be bred and foaled in Kentucky in order for the resulting foal to be eligible to receive distributions from the fund. This requirement provides economic support to all businesses and individuals who provide services necessary for the breeding and racing of Quarter Horses, Paint Horses, Appaloosa and Arabian horses. See Regulatory Impact Analysis and Tiering Statement, Section (3).

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET KENTUCKY HORSE RACING COMMISSION (New Administrative Regulation)

#### 810 KAR 7:070. Violations, discipline, disputes, and investigation.

RELATES TO: KRS 230.215, 230.225(5)(c), 230.320, 230.330, 230.400, 230.400 445, 230.770, 230.800, 230.802, 230.804.

STATUTORY AUTHORITY: KRS 230.370, KRS 230.445, 230.770(6) and (7), 230.802(1) and (2)(b), KRS 230.804(2)(b).

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. KRS 230.800(2)(b) requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the Kentucky Thoroughbred Breeders' Incentive Fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. KRS 230.804(2)(b) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the Kentucky Horse Breeders' Incentive Fund. KRS 230.445 establishes the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky; upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky. KRS 230.370 authorizes the commission to promulgate any reasonable and necessary administrative regulation for the conduct of hearings before it. This administrative regulation

establishes a uniform process for enforcing the standards for distribution of money from these funds and for resolving disputes related to them.

Section 1. Violations.

(1) It shall be a violation of this administrative regulation if an applicant or registrant under 810 KAR 7:020 to 7:060, or a person otherwise eligible for or claiming entitlement to an award from a fund administered under 810 KAR 7:020 to 7:060:

(a) Provides any official registrar under KRS 230.400, any advisory committee, or the commission with incorrect, false, or misleading information;

(b) Fails to furnish information requested by the official registrar, advisory committee, or commission within thirty (30) days;

(c) Is charged or convicted of a crime, offense, or other criminal or civil violation involving cruelty, mistreatment, abuse, or neglect of a horse;

(d) Engages in conduct that is against the best interests of horse breeding or horse racing; or

(e) Violates any provision of KRS Chapter 230 or KAR Title 810 in any other manner.

(2) For any violation of this regulation, the commission may:

(a) Deny an application;

(b) Suspend, deny, or revoke a registration; or

(c) Deny or revoke an award.

(3) In addition to the penalties in subsection 2, for a violation of this administrative regulation, the commission may bar a person from participation in any incentive or development fund under 810 KAR Chapter 7 for a period of one (1) to five (5) years based on the seriousness of the violation. For a second or subsequent violation of this administrative regulation, the commission shall impose a lifetime bar from participation in any fund administered under 810 KAR Chapter 7.

(4) A person charged, but not convicted of a crime, offense, or other criminal or civil violation as provided in subsection (1)(c) may petition the commission for reinstatement. The commission shall reinstate the earnings, registration, or application upon submission of proof satisfactory to the commission that the charges were dismissed and the facts forming the basis of the charges were false.

Section 2. Disciplinary Process.

(1) The commission shall investigate suspected violations of this administrative regulation.

(2) Upon the completion of the investigation, the person or persons conducting the investigation shall submit a written report to the executive director containing a statement of the facts disclosed by the investigation.

(3) Based on consideration of the investigative report, the executive director shall determine whether there is prima facie cause to believe that a violation has been committed.

(4) Upon determination that prima facie cause exists, the executive director shall issue written notice of disciplinary action. The notice shall set forth:

(a) The statutory or regulatory violation;

(b) The factual basis on which the disciplinary action is based;

(c) The penalty imposed; and

(d) A statement that the notice may be appealed to an administrative hearing by written notice sent to the commission within twenty (20) calendar days of issuance of the notice.

(7) Notice of a disciplinary action under this section may be appealed to an administrative hearing. A written request for an administrative hearing shall be filed with the commission within twenty (20) calendar days of the date of the executive director's notice. The request shall identify the specific issues in dispute and the legal basis on which the executive director's decision on each issue is believed to be erroneous.

(8) An administrative hearing under this section shall be conducted under KRS Chapter 13B.

(9) If the request for an administrative hearing is not timely filed, the penalty laid out in the notice of disciplinary action shall be effective upon the expiration of the time to request an

administrative hearing.

Section 3. Disputes.

(1) Any non-disciplinary dispute between the commission and an applicant or registrant under 810 KAR 7:020 to 7:060, or a person otherwise eligible for or claiming entitlement to an award from a fund administered under 810 KAR 7:020 to 7:060, shall be raised by the aggrieved party by filing a petition seeking relief with the executive director of the commission within thirty (30) days of the action or the inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall refer the matter for an administrative hearing under KRS Chapter 13B.

Section 4. Consent to Investigate; Additional Information. Application or registration under 810 KAR 7:020 to 7:060, or submission of any claim for an award from a fund administered under 810 KAR 7:020 to 7:060, shall constitute consent to:

(1) Investigation by the commission or any advisory committee of all information provided to the commission or any advisory committee;

(2) Site visits to verify all mare and stallion residency requirements set forth in 810 KAR Chapter 7; and

(3) Provide any additional information requested by the commission or any advisory committee.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for investigating and resolving disciplinary and other disputes related to horse development and breeder incentive funds.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth KRS 230.400, which establishes the Kentucky Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes; KRS 230.800(2)(b), which requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the Kentucky Thoroughbred Breeders' Incentive Fund; KRS 230.770(6) and (7),

which authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races; KRS 230.802(1), which establishes the Kentucky standardbred breeders' incentive fund; KRS 230.802(2)(b), which authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the Kentucky standardbred breeders' incentive fund; KRS 230.804(2)(b), which authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the Kentucky Horse Breeders' Incentive Fund; and KRS 230.445, which establishes the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.370, KRS 230.445, 230.770(6) and (7), 230.802(1) and (2)(b), KRS 230.804(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform process for enforcing the standards for distribution of money from these funds and for resolving disputes related to them.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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 owners, breeders, and official breed registrars of thoroughbred, Standardbred, and other horse breeds.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons charged with a violation of the Kentucky Horse Racing Commission's development or breeder incentive fund regulations or having a dispute with the commission over those funds will be required to conform to the procedures established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities participating in the administrative process will face potential costs associated with an administrative hearing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, Kentucky's horse owners and breeders will benefit from having their duties and rights with respect to discipline, disputes, and appeals clearly defined.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

There are no cost associated with the implementation and enforcement of this administrative regulation: Any necessary funding will be provided from the budget of the Kentucky Horse Racing Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this new administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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. The statutory authority for this administrative regulation is found in KRS 230.370, 230.445, 230.770(6) and (7), 230.802(1) and (2)(b), 230.804(2)(b).

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? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No revenue will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No revenue will be required to administer this regulation for the first year.

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: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 8:010. Medication; Testing Procedures; Prohibited Practices.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize 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 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.

#### 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 non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 8:020, or 810 KAR 8:040, was present in the sample.

(a) For the drugs, medications, or substances listed in this administrative regulation or 810 KAR 8:020 for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided for the finding to be considered a positive finding.

(b) Positive finding also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse 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 biologic specimens for 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 expressly permitted in 810 KAR Chapter 8, while participating in a race (betting or non-betting), qualifying race, or time trial, it shall be a violation for a horse to carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is foreign to the horse; or

(b) Might mask the presence of a prohibited drug, or obstruct testing procedures.

(3) It shall be a violation for therapeutic medications to be present in excess of established threshold concentrations set forth in this administrative regulation or in 810 KAR 8:020. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a) and (b) of this subsection, it shall be a violation for a substance to 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.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, or time trial, 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 (betting or non-betting), qualifying race, or time trial; 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 8:020, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 8:030.

#### 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 by injection a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance 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 possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards or judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards or judges 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. 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): eight (8) to twenty (20) milligrams per kilogram;
- (2) Omeprazole (Gastrogard): two and two-tenths (2.2) grams;
- (3) Ranitidine (Zantac): eight (8) milligrams per kilogram; and
- (4) Sucralfate: two (2) to four (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, qualifying race, or time trial.

(2) (a) Only the commission veterinarian shall administer furosemide prior to a race, qualifying race, or time trial.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, qualifying race, or time trial, 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.

(c) If the furosemide is administered by an approved licensed 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 the furosemide is competing.

(3) Furosemide may be used under the circumstances established in this subsection.

(a) Furosemide shall be administered at a location under the jurisdiction of the commission where the horse is scheduled to race.

(b) Furosemide shall be administered by a single intravenous injection, not less than four (4) hours prior to post time for the race, qualifying race, or time trial in which the horse is entered.

(c) The furosemide dosage administered shall not exceed 500 milligrams, nor be less than 150 milligrams.

(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 serum or plasma shall be performed by the commission laboratory. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the serum or plasma sample. Concentrations above 100 nanograms of furosemide per milliliter of 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. 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. 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 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 notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, serum, or plasma.

(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 (2.0) micrograms per milliliter of serum or plasma;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of serum or plasma; and

(c) Ketoprofen - not to exceed two (2) nanograms per milliliter of serum or plasma.

(2) NSAIDs, 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. However, as provided in 810 KAR 8:020, the recommended withdrawal guideline for flunixin is thirty-two (32) 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 three-tenths (0.3) microgram per milliliter of 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 serum or plasma shall not constitute a violation of this section.

(d) A finding of ketoprofen below a concentration of one (1) nanogram per milliliter of serum or plasma shall not constitute a violation of this section.

#### 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 sample 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 or metabolic derivative exceeds naturally occurring physiological levels shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma.

(b) Nandrolone:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty five (25) picograms per milliliter in serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty five (25) picograms per milliliter in serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter of metabolite, 5 $\alpha$ -estrane-3 $\beta$ , 17 $\alpha$ -diol in urine or a ratio in urine of 5 $\alpha$ -estrane-3 $\beta$ , 17 $\alpha$ -diol to 5 $\alpha$ -estrane-3 $\beta$ , 17 $\alpha$ -diol of >1:1.

(c) Testosterone:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter in urine or free

testosterone one hundred (100) picograms per milliliter in serum or plasma.

(3) 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.

Section 10. Test Barn.

(1), A licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient: (a) in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens; and

(b) In structural design to prevent entry by unauthorized persons.

(3) The test barn shall be under the supervision and control of the commission chief veterinarian, and no access to individuals other than commission personnel shall be permitted unless with the permission of the commission chief veterinarian. If association personnel require immediate access to the test barn due to fire or other emergency, the association shall report the access to commission officials as soon as possible after the emergency.

Section 11. Sample Collection, Testing and Reporting.

(1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 8:060 and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian, in consultation with the commission laboratory shall determine a minimum sample requirement 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 tested by a split sample laboratory approved by the Commission.

(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 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 stewards and judges shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards or judges shall conduct a hearing as soon as possible after the conclusion of an investigation of a positive finding. A person charged with a violation may request a continuance, which the stewards or the judges may grant for good cause shown.

Section 12. Storage and Shipment of Split Samples.

(1) Split samples shall be secured and made available for further testing in accordance with the procedures established in this subsection:

(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.

(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 a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards or judges 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.

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 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.

(2) 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) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the condition of a horse in his or her care.

(2) In the absence of substantial evidence to the contrary, 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 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 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 and 810 KAR 4:010, 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 or 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 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 2:010 Section 4(1)(l);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at the time prescribed by racing officials before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling or preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges or stewards pursuant to 810 KAR 3:040, 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 or judges.

(2) A veterinarian shall report to the stewards, judges 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, 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 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 8:030.

(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 or 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.

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 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 participate in a race (betting or non-betting), qualifying race, time trial, or 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.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples.

(1) For all races, purse money in thoroughbred and other flat racing shall be paid or distributed pursuant to the process provided in 810 2:070, Section 29(3), and in standardbred racing, no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(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 or judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) If the purse money has been distributed, the stewards or judges shall order the money returned immediately to the association upon notification from the commission laboratory that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(5) 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 Constituting a Violation of this Administrative Regulation.

(1) A drug, medication, substance, or device shall not be possessed or used by a licensee, or his designee or agent, within a non-public 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 or 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 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 or driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the conditions established in this subsection 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.

(d) Prior to administering the treatment, a report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy

(6) Other than furosemide, an alkalinizing substance that could alter the 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 serum or plasma total carbon dioxide (TCO<sub>2</sub>) level shall not exceed thirty-seven (37.0) millimoles per liter; except, a violation shall not exist if the TCO<sub>2</sub> 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.

(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<sub>2</sub> Testing and Procedures.

(1) (a) The stewards, judges, 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 serum or plasma of the horse. The winning horse and other horses, as selected by the stewards or judges, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race sampling 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<sub>2</sub> concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO<sub>2</sub> level exceeds thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> is determined to exceed thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty and the licensed owner or trainer of the horse certifies in writing to the stewards or 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 steward or judges, 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<sub>2</sub>, as registered in the original test, is physiologically normal for that horse, the stewards or 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 TCO<sub>2</sub> 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 4:010, 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", KHRC 8-010-1;

(b) "Split Sample Chain of Custody Form", KHRC 8-010-2; and

(c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for pre- and post-race testing at licensed racing associations in the Commonwealth. The regulation sets forth specific prohibitions concerning medications, establishes the primary and split sample collection process and notification requirements, sets forth the trainer responsibility rule, establishes the veterinarian's list, contains provisions concerning the veterinary and medical labeling, and sets forth the procedures concerning search and seizure on association grounds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes 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 horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medication in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with these requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.300.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 8:020. Drug, medication, and substance classification schedule and withdrawal guidelines.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky and the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 8-020-1, shall establish the respective classifications of all substances contained therein. The "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian", KHRC 8-020-2, shall provide certain mandatory treatment requirements and guidance and advice on withdrawal intervals as contained therein.

#### Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 8-020-1; and

(b) "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian", KHRC 8-020-2.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m., or on the commission's Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the

public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates the "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule" and the "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian." These documents operate in conjunction with 810 KAR 8:010 and 810 KAR 8:030 to establish requirements and guidelines concerning the use of medication in horses on racing dates at race meetings in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly regulate the use of medication in horses on racing dates at race meetings in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes 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 horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medication in horse racing.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with these requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.300.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 8:030. Disciplinary measures and penalties.**

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.310, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(8), 230.265, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations under which 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. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards, 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 KAR Title 810 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 810 KAR 8:010, Section 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 810 KAR 8:020.

(11) "Secondary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 810 KAR 8:010, Section 8(3)(b), (c) and (d), respectively.

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines established in 810 KAR 8:020.

**Section 2. General Provisions.**

(1) An alleged violation of the provisions of KRS Chapter 230 or KAR Title 810 shall be adjudicated in accordance with this administrative regulation, 810 KAR 9:010, and KRS Chapters 230 and 13B.

(2) If a drug, medication, or substance that is not classified in the schedule 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, 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, 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 stewards, judges, and the commission as a mitigating factor to be used in determining violations and penalties.

(4) 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.

(5) A suspension or revocation shall be calculated in Kentucky calendar days, unless otherwise specified by the stewards, judges, or the commission in a ruling or order.

(6) Notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice and terms of the penalty shall be posted immediately on the official Web site of the commission and sent to the United States Trotting Association, the Association of Racing Commissioners International, or their successors, as applicable, to be posted on their respective official Web sites. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 810 KAR 8:010 may be required to pass a commission-approved examination as determined by the stewards pursuant to 810 KAR 4:010, Section 10, or be placed on the veterinarian's list pursuant to 810 KAR 8:010, Section 18.

(8) 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 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 or 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.

(9) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 810 KAR 8:010 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(10) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or Title 810 KAR shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards or judges.

(11) In accordance with KRS 230.320(6), 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.

(12) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the stewards, 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 stewards, judges, or the commission.

(13) If a penalty for a medication violation requires a horse to be placed on the stewards' list or the judges' list for a period of time, the stewards or judges may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive result.

(14) In standardbred racing only, 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.

(15) A horse shall not be permitted to race while owned or controlled wholly or in part by a person whose license has been suspended or revoked.

(16) An association under the jurisdiction of the commission shall not willfully allow:

(a) A person whose license has been suspended or revoked in any jurisdiction to participate in racing;

(b) A horse suspended in any jurisdiction to start in a race or a performance against time; or

(c) The use of its track or grounds by a licensee whose license has been suspended or revoked and has been denied access to the grounds by the stewards or judges in any jurisdiction.

(17) If a person is ejected or excluded from a location under the jurisdiction of the commission, the stewards, judges, and commission director of security shall be notified in writing.

(18) 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) At the discretion of the stewards or judges, during a race meet at another operating track in any jurisdiction 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.

(19) A penalty imposed by the governing body of any racing jurisdiction or the USTA States Trotting Association shall be recognized and reciprocally enforced by the commission unless application is made for a hearing before the stewards or judges, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky. The hearing shall be limited to the following issues:

(a) Whether the applicant is the same person who is subject to the penalty imposed;

(b) Whether the USTA or other racing jurisdiction in fact suspended the applicant; and

(c) Determination of the time period of the suspension as imposed by the USTA or other racing jurisdiction.

**Section 3. Prior Offenses.** A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards, judges, and the commission in assessing penalties. The stewards or 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.

**Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.**

(1) Class A drugs.

(a) Trainer

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension, absent mitigating circumstances;	Three (3) to five (5) year suspension, absent mitigating circumstances;	Five (5) year suspension to a lifetime ban, absent mitigating circumstances;
AND	AND	AND
\$10,000 to \$25,000 fine, absent mitigating circumstances.	\$25,000 to \$50,000 fine, absent mitigating circumstances.	\$50,000 to \$100,000 fine, absent mitigating circumstances.

(b) Owner

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse;	Disqualification and loss of purse;	Disqualification and loss of purse;
AND	AND	AND
Horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Horse shall be placed on the stewards' list or judges' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Ninety (90) day suspension, absent mitigating circumstances;
		AND
		\$50,000 fine, absent mitigating circumstances;
		AND
		Horse shall be placed on the stewards' list or judges' list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(2) (a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Class B drugs;
2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and
3. Cobalt in a concentration greater than fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension, absent mitigating circumstances;	Sixty (60) to 180 day suspension, absent mitigating circumstances;	180 to 365 day suspension, absent mitigating circumstances;
AND	AND	AND
\$500 to \$1,000 fine, absent mitigating circumstances.	\$1,000 to \$2,500 fine, absent mitigating circumstances.	\$2,500 to \$5,000 fine, absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
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Disqualification and loss of purse;	Disqualification and loss of purse;	Disqualification and loss of purse;
	AND	AND
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges;	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.
AND		
For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.		

(3) (a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than five (5.0) micrograms per milliliter;

2. Flunixin in a concentration greater than 100 nanograms per milliliter; and

3. Ketoprofen in a concentration greater than fifty (50) nanograms per milliliter.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension absent mitigating circumstances;	Ten (10) to thirty (30) day suspension absent mitigating circumstances;	Thirty (30) to sixty (60) day suspension absent mitigating circumstances;
AND	AND	AND
\$500 to \$1,500 fine absent mitigating circumstances.	\$1,500 to \$2,500 fine absent mitigating circumstances.	\$2,500 to \$5,000 fine absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse;	Disqualification and loss of purse;	Disqualification and loss of purse;
AND	AND	
Horse may be	If same horse as first	\$5,000 fine, absent mitigating circumstances;

required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	offense, horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	AND  If same horse as first and second offenses, horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.
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(4) (a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of permitted NSAIDs as follows:

a. Phenylbutazone in a concentration greater than two (2.0) micrograms per milliliter through five (5.0) micrograms per milliliter;

b. Flunixin in a concentration greater than twenty (20) nanograms per milliliter through 100 nanograms per milliliter; and

c. Ketoprofen in a concentration greater than two (2.0) nanograms per milliliter through fifty (50) nanograms per milliliter;

2. Overage of furosemide in a concentration greater than 100 nanograms per milliliter;

3. Furosemide not identified when notice made that the horse would run on furosemide; and

4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a \$500 fine, absent mitigating circumstances.	Written warning to a \$750 fine, absent mitigating circumstances.	\$500 to \$1,000 fine, absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges;	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	If same horse as first and second offenses, disqualification and loss of purse;
AND		AND
For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per		Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

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billion. The owner shall be responsible for the cost of testing.		
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(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

**(a) Trainer**

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below the primary threshold and above the secondary threshold.
First offense	Zero to sixty (60) day suspension, absent mitigating circumstances;  AND  \$500 to \$1,000 fine, absent mitigating circumstances.	Zero to fifteen (15) day suspension, absent mitigating circumstances;  AND  \$250 to \$750 fine, absent mitigating circumstances.	Zero to five (5) day suspension, absent mitigating circumstances;  AND  \$250 to \$500 fine, absent mitigating circumstances.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension, absent mitigating circumstances;  AND  \$1,000 to \$2,500 fine, absent mitigating circumstances.	Fifteen (15) to thirty (30) day suspension, absent mitigating circumstances;  AND  \$750 to \$1,500 fine, absent mitigating circumstances.	Five (5) to ten (10) day suspension, absent mitigating circumstances;  AND  \$500 to \$1,000 fine, absent mitigating circumstances.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension, absent mitigating circumstances;  AND  \$2,500 to \$5,000 fine, absent mitigating circumstances.	Thirty (30) to sixty (60) day suspension, absent mitigating circumstances;  AND  \$1,500 to \$3,000 fine, absent mitigating circumstances.	Ten (10) to fifteen (15) day suspension, absent mitigating circumstances;  AND  \$1,000 to \$2,500 fine, absent mitigating circumstances.

**(b) Owner**

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below the primary threshold and above the secondary threshold.
First offense	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.

**(6) Class D drugs.**

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

**(b) Trainer**

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension, absent mitigating circumstances;  AND  \$250 to \$500 fine, absent mitigating circumstances.	Five (5) to ten (10) day suspension, absent mitigating circumstances;  AND  \$500 to \$1,000 fine, absent mitigating circumstances.

**Section 5. TCO2 Penalties.** Penalties for violations of 810 KAR 8:010, Section 20(6), (7), or (8) shall be as follows:

**(1) Trainer**

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension, absent mitigating circumstances;  AND  \$1,000 to \$1,500 fine, absent mitigating circumstances.	Ninety (90) to 180 day suspension, absent mitigating circumstances;  AND  \$1,500 to \$3,000 fine, absent mitigating circumstances.	180 to 365 day suspension, absent mitigating circumstances;  AND  \$3,000 to \$5,000 fine, absent mitigating circumstances.	One (1) year suspension to lifetime ban, absent mitigating circumstances.

(2) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse;  AND  If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse;  AND  If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse;  AND  If same horse as first, second, and third offenses, horse shall be placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 810 KAR 8:010, Section 20(5), (9), or (10), shall be as follows:

(1) Trainer

First offense	Second offense in any racing jurisdiction	Third offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension absent mitigating circumstances;  AND  \$1,000 to \$5,000 fine absent mitigating circumstances.	Sixty (60) to 180 day suspension absent mitigating circumstances;  AND  \$5,000 to \$10,000 fine absent mitigating circumstances.	180 to 365 day suspension absent mitigating circumstances;  AND  \$10,000 to \$20,000 fine absent mitigating circumstances.

(2) Owner

First offense	Second offense in any racing jurisdiction	Third offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse;  AND  If same horse as first offense, horse shall be placed on the stewards' list or judges' list from	Disqualification and loss of purse;  AND  If same horse as first and second offenses, horse shall be placed on the stewards' list or

	fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	judges' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.
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Section 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 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 veterinary 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 services provided to a horse formerly under the care, training, or veterinary 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 8. Other Disciplinary Measures.

(1) A person who violates 810 KAR 8:010, 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 810 KAR 8:010, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards or Judges. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or Title 810 KAR, if not otherwise provided for in this administrative regulation, the stewards or judges may impose one (1) or more of the following penalties:

(1) 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) 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;

(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 or judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be denied access to association grounds or a portion of association grounds; and

(4) Payment of a fine in an amount not to exceed \$50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

#### Section 10. Disciplinary Measures by the Commission.

(1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or KAR Title 810, 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 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;

(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 denied access to association grounds or a portion of association grounds for a length of time the commission deems necessary;

(d) 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) Upon appeal of a matter determined by the stewards' or judges the commission may:

(a) Order a hearing de novo of a matter determined by the stewards' or judges; and

(b) Reverse or revise the stewards' or judges' ruling in whole or in part, except as to findings of fact by the stewards' or 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 stewards or judges for a foul in a race.

#### Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Request for Post-race Testing of Claimed Horse", KHRC 8-030-1; and

(b) "Claim Blank envelope", 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the penalties for violations of the requirements and prohibitions concerning the use of medication at race meetings at licensed racing associations in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes 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 horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to

adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medication in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with these requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.300.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

#### 810 KAR 8:040. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate 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. This administrative regulation establishes new sampling and testing procedures for prohibited substances, and establishes penalties for individuals found to be in.

#### Section 1. Definitions.

(1) "Endogenous" means a substance that is naturally produced by the healthy body.

(2) "Exogenous" means a substance that is not naturally produced by the healthy body.

(3) "Out of competition testing" means all testing other than:

(a) Pre-race TCO2 testing; and

(b) Post-race testing at a licensed association under the jurisdiction of the commission.

(4) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means blood, urine, or other biologic matter taken or drawn from a horse for testing.

#### Section 2. Prohibited Substances and Practices.

(1) All substances identified in this administrative regulation shall be prohibited unless specifically permitted. A positive finding by the commission laboratory of a substance prohibited by this administrative regulation in a specimen taken from a horse designated for testing by a commission veterinarian or his designee shall be prima facie evidence that a violation has occurred. Any reference to substances in this section does not alter the requirements for testing concentrations in race day samples set forth in 810 KAR 8:010 and 810 KAR 8:050.

(2) Any pharmacological substance not addressed by this administrative regulation and without current approval by the U.S. Food and Drug Administration for human or veterinary use shall be prohibited at all times absent prior approval of the commission. If a veterinarian seeks approval to use a pharmacological substance not currently approved by the U.S. Food and Drug Administration, the commission or its designee may consult with the Association of Racing Commissioners International, the Racing and Medication Testing Consortium, or their successors to determine whether to authorize use of the substance.

(3) Therapeutic substances not otherwise prohibited by this administrative regulation shall be permitted provided such substances:

(a) Are currently approved for human or veterinary use by the U.S. Food and Drug Administration; and

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(4) Compounded medications not otherwise prohibited by this administrative regulation shall be permitted provided such medications:

(a) Are permitted by federal law or the law of the state where the horse is located when the compounded medication is administered; and,

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(5) (a) Except as provided in paragraph (b) of this



subsection, the following Anabolic Androgenic Steroids (AAS) are prohibited:

1. Exogenous AAS, including: 1-androstenediol (5 $\alpha$ -androst-1-ene-3 $\beta$ ,17 $\beta$ -diol); 1-androstenedione (5 $\alpha$ -androst-1-ene-3,17-dione); bolandiol (estr-4-ene-3 $\beta$ ,17 $\beta$ -diol); bolasterone; boldenone; boldione (androst-1,4-diene-3,17-dione); calusterone; clostebol; danazol ([1,2]oxazolo[4',5':2,3]pregna-4-en-20-yn-17 $\alpha$ -ol);

dehydrochlormethyltestosterone (4-chloro-17 $\beta$ -hydroxy-17 $\alpha$ -methylandrosta-1,4-dien-3-one); desoxymethyltestosterone (17 $\alpha$ -ethyl-5 $\alpha$ -androst-2-en-17 $\beta$ -ol); drostanolone; ethylestrenol (19-norpregna-4-en-17 $\alpha$ -ol); fluoxymesterone; formebolone; furazabol (17 $\alpha$ -methyl[1,2,5]oxadiazolo[3',4':2,3]-5 $\alpha$ -androst-17 $\beta$ -ol); gestrinone; 4-hydroxytestosterone (4,17 $\beta$ -dihydroxyandrost-4-en-3-one); mestanolone; mesterolone; metandienone (17 $\beta$ -hydroxy-17 $\alpha$ -methylandrosta-1,4-dien-3-one); metenolone; methandiol; methasterone (17 $\beta$ -hydroxy-2 $\alpha$ ,17 $\alpha$ -dimethyl-5 $\alpha$ -androst-3-one); methylidienolone (17 $\beta$ -hydroxy-17 $\alpha$ -methylestra-4,9-dien-3-one); methyl-1-testosterone (17 $\beta$ -hydroxy-17 $\alpha$ -methyl-5 $\alpha$ -androst-1-en-3-one); methylnor testosterone (17 $\beta$ -hydroxy-17 $\alpha$ -methylestr-4-en-3-one); methyltestosterone; metribolone (methyltrienolone, 17 $\beta$ -hydroxy-17 $\alpha$ -methylestra-4,9,11-trien-3-one); mibolerone; nandrolone; 19-norandrostenedione (estr-4-ene-3,17-dione); norboleone; norclostebol; norethandrolone; oxabolone; oxandrolone; oxymesterone; oxymetholone; prostanazol (17 $\beta$ -[(tetrahydropyran-2-yl) oxy]-1'H pyrazolo[3,4:2,3]-5 $\alpha$ -androstane); quinbolone; stanozolol; stenbolone; 1-testosterone (17 $\beta$  hydroxy-5 $\alpha$ -androst-1-en-3-one); tetrahydrogestrinone (17-hydroxy-18 $\alpha$ -homo-19-nor-17 $\alpha$  pregna-4,9,11-trien-3-one); and trenbolone (17 $\beta$ -hydroxyestr-4,9,11-trien-3-one).

2. Endogenous AAS or their synthetic esters when administered exogenously: androstenediol (androst-5-ene-3 $\beta$ ,17 $\beta$ -diol); androstenedione (androst-4-ene-3,17-dione); dihydrotestosterone (17 $\beta$ -hydroxy-5 $\alpha$ -androst-3-one); prasterone (dehydroepiandrosterone, DHEA, 3 $\beta$ -hydroxyandrost-5-en-17-one); testosterone; and their metabolites and isomers, including but not limited to: 5 $\alpha$ -androstane-3 $\alpha$ ,17 $\alpha$ -diol; 5 $\alpha$ -androstane-3 $\alpha$ ,17 $\beta$ -diol; 5 $\alpha$ -androstane-3 $\beta$ ,17 $\alpha$ -diol; 5 $\alpha$ -androstane-3 $\beta$ ,17 $\beta$ -diol; 5 $\beta$ -androstane-3 $\alpha$ ,17 $\beta$ -diol; androst-4-ene-3 $\alpha$ ,17 $\alpha$ -diol; androst-4-ene-3 $\alpha$ ,17 $\beta$ -diol; androst-4-ene-3 $\beta$ ,17 $\alpha$ -diol; androst-5-ene-3 $\alpha$ ,17 $\alpha$ -diol; androst-5-ene-3 $\alpha$ ,17 $\beta$ -diol; androst-5-ene-3 $\beta$ ,17 $\alpha$ -diol; 4-androstenediol (androst-4-ene-3 $\beta$ ,17 $\beta$ -diol); 5-androstenedione (androst-5-ene-3,17-dione); androsterone (3 $\beta$ -hydroxy-5 $\alpha$ -androst-17-one); epi-dihydrotestosterone; epitestosterone; etiocholanolone; 7 $\alpha$ -hydroxy-DHEA; 7 $\beta$ -hydroxy-DHEA; 7-keto-DHEA; 19-norandrosterone; 19-noretiocholanolone.

(b) Anabolic steroids may be used out of competition provided:

1. The anabolic steroid is currently approved for human or veterinary use by the U.S. Food and Drug Administration;

2. The administration is:

a. Performed pursuant to a valid veterinary prescription;

b. Entered into the horse's medical record by the administering veterinarian; and

c. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication;

3. The record is made available upon request for inspection by the commission or its designee; and

4. The horse is placed on the Veterinarian's List for six (6) months after the last administration of an anabolic steroid or agent.

(6) (a) Except as provided in paragraph (b) of this subsection, the following anabolic agents shall be prohibited: 1) clenbuterol, 2) selective androgen receptor modulators (SARMs), 3) ractopamine, 4) tibolone, 5) zeranol, and 6) zilpaterol.

(b) Clenbuterol may be administered provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported by the administering veterinarian to the commission no later than 24 hours after administration or dispensing of the medication.

(7) The following substances shall be prohibited:

(a) Erythropoiesis-Stimulating Agents (ESAs), including darbepoetin (dEPO); erythropoietins (EPO); EPOmimetic peptides (EMP), e.g., CNTO 530 and peginesatide; and methoxypolyethylene glycol-epoetin beta (CERA);

(b) Non-erythropoietic EPO-Receptor agonists, including ARA-290, asialo EPO and carbamylated EPO; and

(c) Hypoxia-inducible factor (HIF) stabilizers, including cobalt (when detected at concentrations in excess the threshold prescribed in 810 KAR 8:010 Sec. 2(4)(b)), and roxadustat (FG-4592); and HIF activators, (e.g., argon, xenon).

(8)(a) Except as provided in paragraph (b) of this subsection, Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) and their releasing factors, shall be prohibited in male horses.

(b) Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) may be used in male horses provided:

1. The treatment is pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(9)(a) Except as provided in paragraph (b) of this subsection, Corticotrophin releasing factors and corticotrophin releasing hormones (CCRH) shall be prohibited.

(b) Adrenocorticotrophic Hormone (ACTH) may be used provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian.

(c) Growth Hormone (GH); Growth Hormone Releasing Hormone (GHRH); CJC-1295, sermorelin and tesamorelin; Growth Hormone Secretagogues (GHS); anamorelin; ipamorelin; GH-Releasing Peptides (GHRPs); alexamorelin; GHRP-6; hexarelin; and pralmorelin (GHRP-2) shall be prohibited.

(d) Venoms and toxins from sources, including snails, snakes, frogs, and bees and their synthetic analogues, including ziconotide, shall be prohibited.

(e) Growth factors, including Fibroblast Growth Factors (FGFs), Hepatocyte Growth Factor (HGF), Insulin-like Growth Factor-1 (IGF-1) and its analogues, Mechano Growth Factors (MGFs), Platelet-Derived Growth Factor (PDGF), Vascular-Endothelial Growth Factor (VEGF) and any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching shall be prohibited.

(10) Platelet rich plasma (PRP) and autologous conditioned plasma (IRAP) may be used provided such treatment is:

(a) Pursuant to a valid veterinary prescription; and

(b) Reported to the commission's representative at the time of sampling if administered within the preceding twenty-four (24) hours.

(11) All beta-2 agonists, including all optical isomers (i.e. *d*- and *l*-) where relevant, shall be prohibited.

(12) Clenbuterol and albuterol are permitted provided the treatment is:

(a) Pursuant to a valid veterinary prescription; and

(b) Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian.

(13) Hormone and metabolic modulators shall be prohibited including:

(a) Aromatase inhibitors, including aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17-trione (6-oxo), exemestane, formestane, letrozole, testolactone;

(b) Selective estrogen receptor modulators (SERMs), including raloxifene, tamoxifen, toremifene;

(c) Other anti-estrogenic substances, including clomiphene, cyclofenil, fulvestrant;

(d) Agents modifying myostatin function(s), including myostatin inhibitors;

(e) Activators of the AMP-activated protein kinase (AMPK), including 5-Aminoimidazole-4-carboxamide ribonucleotide (AICAR); and Peroxisome Proliferator Activated Receptor  $\delta$  (PPAR $\delta$ ) agonists including GW 1516;

(f) Insulins;

(g) Trimetazidine;

(h) Thyroxine, and thyroid modulators/hormones including T4

(tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof.

(i) Thyroxine (T4) is permitted provided that:

1. The treatment is pursuant to a valid veterinary prescription; and

2. A treatment report is filed in writing or electronically with the commission within twenty-four (24) hours of the administration or dispensing of the medication by the veterinarian.

(j) Altrenogest may be used in fillies and mares provided that such treatment is pursuant to a valid veterinary prescription. Altrenogest is permitted in intact males provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(18)(a) Except as provided in paragraphs (b) and (c) of this subsection, diuretics shall be prohibited, including acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, ethacrynic acid, indapamide, metolazone, spironolactone, thiazides including bendroflumethiazide, chlorothiazide, hydrochlorothiazide, torsemide, triamterene, vasopressin receptor antagonists or vaptans, including tolvaptan.

(b) Furosemide and trichlormethiazide may be used out of competition provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported at the time of sampling if administered within the preceding twenty-four (24) hours.

(c) Other diuretics, including those set forth in paragraph (a) above, may be administered in an emergency provided the treatment is:

1. Pursuant to a valid veterinary prescription;

2. Reported to the commission within twenty-four (24) hours of administration.

(19) Masking agents, including desmopressin, plasma expanders (including glycerol; intravenous administration of albumin, dextran, and hydroxyethyl starch), and probenecid, shall be prohibited.

(20) The administration or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood or red blood cell products of any origin into the circulatory system shall be prohibited.

(21) Artificially enhancing the uptake, transport or delivery of oxygen, with perfluorochemicals, efaproxiral (RSR13), hemoglobin products, hemoglobin-based blood substitutes, and microencapsulated hemoglobin products (excluding supplemental oxygen) shall be prohibited.

(22)(a) Except as provided in paragraph (b) of this subsection, any form of intravascular manipulation of the blood or blood components by physical or chemical means shall be prohibited.

(b) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

(23) Polymers of nucleic acids or nucleic acid analogues shall not be transferred unless prior approval is requested and received from the commission or its designee.

(24) The use of normal or genetically modified hematopoietic cells shall be prohibited.

(25) Mesenchymal stem cells may be used for treatment of musculo-skeletal disorders, provided that such treatment is:

1. Entered by the veterinarian in the horse's medical record, which record shall be made available to a designee of the commission upon request;

2. Pursuant to a valid veterinary prescription; and

3. Reported to the commission's representative at the time of sampling.

### Section 3. Out-of-Competition Testing.

(1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody, or control of a trainer licensed by the commission;

(b) It is owned by an owner licensed by the commission;

(c) It is nominated to a race at an association licensed

pursuant to KRS 230.300;

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months;

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund, the Kentucky Standardbred Development Fund, or the Kentucky quarter horse, paint horse, Appaloosa and Arabian Development Fund.

(2) A horse subject to testing under subsection (1) of this section may be designated for testing by the executive director, the chief state steward, chief judge, or their respective designee.

(3) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at a place designated by the commission veterinarian, or his or her designee; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is issued by the commission veterinarian or his or her designee.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 17, and the steward's list or judges' list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(4) Responsible persons.

(a) The trainer of the horse shall be responsible for the condition of a horse sampled for an out-of-competition test while on the grounds of a licensed training facility or racetrack.

(b) If the horse is sampled while not on the grounds of a licensed training facility or racetrack, the owner shall be presumed to be the responsible person unless the owner can establish, by substantial evidence, that another licensed person had accepted the responsibility for the care, custody, and control of the horse, making such person the responsible person.

(c) If a horse sampled for an out-of-competition test was claimed, sold, or otherwise transferred during the time the substance giving rise to the positive test may have been administered, then the commission shall investigate to determine, by a preponderance of the evidence, the identity of the responsible person at the time such substance may have been administered.

(d) If the commission cannot determine a responsible person, then the commission may deem the owner responsible and may place the horse on the veterinarian's list for such time as is necessary to protect the integrity of racing.

(e) If a horse designated for testing is sampled at a location not under the jurisdiction of the commission, the trainer or his designee may declare at the time of sampling any reportable substances that have been administered to the horse but have not previously been disclosed to the commission.

### Section 4. Specimen Collection.

(1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, the presiding judge, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) If a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from that jurisdiction's racing commission or regulatory entity to collect the specimen.

(3) At a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his

or her designee, may collect a specimen from a horse designated for testing at any time.

(4) At a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify orally or in writing the owner, trainer, or their designee before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and split samples. The commission veterinarian, in consultation with the official laboratory, shall determine minimum and split sample requirements as set forth at 810 KAR 8:010, Section 11.

Section 6. Sample Storage and Testing.

(1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with 810 KAR 8:010, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(4) Split samples shall be subject to 810 KAR 8:010, Section 11, and the chain of custody of any split sample shall be maintained in accordance with 810 KAR 8:010, Section 12.

(5) The cost of testing a, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Notice of Violation and Hearing. Within five (5) business days of receipt by the stewards or judges of notification of a violation of this administrative regulation, the stewards or judges shall notify the owner and trainer orally or in writing of the violation and shall schedule a stewards' or judges' hearing within fourteen (14) calendar days of notification by the stewards or judges to the owner and trainer. The hearing may be continued if the stewards or judges determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner, responsible person, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) A positive finding of a substance prohibited by this administrative regulation shall be subject to the penalties for that substance set forth in 810 KAR 8:010, 810 KAR 8:020, and 810 KAR 8:030.

(2) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 17, and the steward's list or judges' list, for 180 days, and the individual or individuals responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(3) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the steward's list, or judges' list pursuant to subsection (4)(c)(2) or subsection (5) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list or judge's list:

(a) Upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance prohibited by this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

(4) Willful failure to make a horse available for sampling, tampering with or attempting to tamper in order to alter the integrity and validity of a sample, including urine substitution or adulteration, or any other deceptive acts or interference in the sampling process, shall be penalized as follows:

(a) For a first offense, a Class A penalty as set forth in 810 KAR 8:030.

(b) For a second offense, permanent license revocation.

(c) A horse that is not produced for out of competition testing shall be placed on the Veterinarian's List for a minimum of 180 days.

(5) Failure to report treatment as required by this administrative regulation:

(a) For a first offense, a warning.

(b) For a second or subsequent offense, a Class D penalty as set forth in 810 KAR 8:030.

(6) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list pursuant to 810 KAR 8:010, Section 17, and the stewards' or judges' list, for a period of up to 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 Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

(7) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (4) of this section:

(a) Upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes out of competition sampling and testing procedures that allow the Commission to detect the presence of certain substances in a horse that are prohibited by this regulation as well as 810 KAR 8:010, but cannot be effectively detected through the existing post-race sampling and testing procedures. These procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, apply to substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detected in the horse's system through post-race sampling and testing. The regulation also establishes a procedure for the adjudication of violations of this administrative regulation.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation: This regulation is necessary because the substances identified in the regulation cannot be effectively regulated through existing post-race sampling and testing procedures. The prohibited substances remain in a horse's system for a limited period of time, but their ability to affect a horse can last for weeks or even months beyond the period during which they can be detected. Because the effects far outlast the substances' detection period, these substances are generally administered well in advance of a race and are not detectable through post-race specimen testing. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which in many instances is before a horse is even entered in a race. This regulation allows the commission to collect such specimens. While this is a new regulation that addresses all breeds of horses racing in Kentucky, it replaces three regulations that are separately applicable to 1) thoroughbred racing (810 KAR 1:110), 2) Standardbred racing (811 KAR 1:240), and 3) Quarter Horse, Paint Horse, Appaloosa and Arabian Racing (811 KAR 2:250). This regulation includes new provisions setting forth a detailed list of prohibited substances modeled on the prohibited substance lists of the World Anti-Doping Agency (WA-DA) and the United States Anti-Doping Agency (USADA). Additionally, the Racing Medication and Testing Consortium (RMTTC) has established permissible exemptions – supported by veterinary declaration of use or dispensing – for certain substances on the prohibited substances list that do have legitimate use in the treatment of horses in training. These substances – which include anabolic steroids, clenbuterol, thyroxine, and others – while having therapeutic uses, also have illicit uses. Investigations conducted in Kentucky, New York, California, and other states have determined that these substances have been extensively used in non-therapeutic ways to enhance performance. This regulation regulates the use of these exempted substances through reporting requirements and restricted administration intervals for these exempted substances. The regulation also revises and simplifies the adjudication and penalty procedures in the previous regulations that are to be followed upon the finding of a violation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the

administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current post-race sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

(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 owners and trainers with horses seeking to race in the Commonwealth; the seven currently-licensed racing associations offering horse racing in Kentucky; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the Kentucky Horse Racing Commission. In the year 2017, the Kentucky Horse Racing Commission licensed approximately 6000 thoroughbred owners, trainers, and owner/trainers, 194 jockeys, and 122 veterinarians; approximately 1100 standardbred owners, trainers, drivers, and owner/trainers/drivers, and 9 veterinarians; and 14 individuals specifically to participate in an Arabian horse race conducted at Churchill Downs. These numbers remain generally consistent from year to year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Owners and trainers will be required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen. The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities as a result of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket

expenses, but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. Owners and trainers will continue to bear any costs associated with the testing of split samples if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this regulation. It will compensate employees for any additional time spent on designating horses to be tested and collecting samples from those horses from its general operating budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses. There associations, however, have expressed support for this regulation because of the manner in which it ensures public confidence in the integrity of racing.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Kentucky Horse Racing Commission will not incur any monetary expenses, but will devote some employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Horse Racing Commission will not incur any monetary expenses, but will devote some employee time toward designating horses for testing and collecting specimens to be tested.

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: Current KHRC staff will devote time to implementing and enforcing this regulation, but no fiscal impact is anticipated at this time.

## PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (New Administrative Regulation)

### 810 KAR 8:050. International Medication Protocol as a Condition of a Race.

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.290, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.290, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation authorizes licensed racing associations to require adherence to International Medication Protocol, as defined, as a condition of entry in a particular race.

Section 1. Definition. "International Medication Protocol" means a condition of a race that all horses nominated or entered to compete in the race shall not be administered furosemide less than twenty-four (24) hours prior to post time for the race.

Section 2. Notwithstanding any other provision of KAR Title 810

to the contrary, an association may require adherence to the International Medication Protocol as a condition of a particular race. The association shall publish the requirement in its condition book or otherwise make the requirement known to all licensees participating in its race meeting. The horses entered to compete in an International Medication Protocol race shall not be eligible to receive furosemide less than twenty-four (24) hours prior to post-race from the race. All matters related to sample collection, ownership, storage, shipment, chain of custody, testing, and reporting and other applicable provisions shall be done in accordance with 810 KAR 8:010, 810 KAR 8:030, and 810 KAR 8:060.

Section 3. Penalties. If the commission laboratory determines the presence of furosemide at a concentration of greater than 1,000 picograms/ml in a serum sample, derived post-race from a horse that is not eligible to receive furosemide pursuant to this administrative regulation, it shall be prima facie evidence that furosemide was administered to the horse in violation of this administrative regulation. Violations of this administration regulation shall be subject to the penalties provided for Class C drug violations in 810 KAR 8:030 Section 4(3).

Section 4. To the extent of any conflict between a provision in this administrative regulation and a provision in any other administrative regulation contained in KAR Title 810, the provisions in this administrative regulation shall supersede.

FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov)

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a procedures by which licensed racing association may opt to run races without the use of furosemide (Lasix).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes 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 horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medication in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.



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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.300.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 8:060 Post-race Sampling and Testing Procedures.**

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215, 230.240

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 the Commonwealth. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Test Barn. In addition to the procedures set forth in 810 KAR 8:010, Section 10, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn shall be:

(a) Currently licensed by the commission;

(b) Display their commission identification badge; and

(c) Have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 2. Race Classifications for Sampling.

(1) For races with purses of \$2,500 or less:

(a) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and

(b) The chief state steward, presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation.

(2) For races with purses that exceed \$2,500 but are less than \$100,000:

(a) The horse finishing first and at least one (1) other horse shall be sampled;

(b) The chief state steward, presiding judge, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation; and

(c) A portion of at least one (1) specimen from each race shall be designated as a gold sample.

(3) For races with purses of \$100,000 or more:

(a) The horses finishing first, second, and third shall be sampled;

(b) The chief state steward, presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation; and

(c) Portions of at least three (3) specimens shall be designated as gold samples.

Section 3. Selection of Horses and Designation of Samples.

(1) In selecting horses for sampling and designating portions of specimens as gold samples or red samples, the chief state steward, presiding judge, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The chief state steward, presiding judge, or his or her designee shall notify the test barn promptly upon completion of a race as to which horse or horses shall be sampled;

(3) Prior to the close of business on the date of sampling, the chief state steward, presiding judge, or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 4. Sampling.

(1) A horse designated for sampling by the stewards or judges shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) If an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 810 KAR 8:010, Section 11.

(4) Split samples shall be subject to the provisions and procedures set forth in 810 KAR 8:010, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures set forth in 810 KAR 8:010, Section 13.

Section 5. Shipment and Testing.

(1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the

procedures set forth in 810 KAR 8:010, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Lab Information Management System, or other information management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a prohibited substance by 810 KAR Chapter 8, all specimen or specimens collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 810 KAR 8:010 and 810 KAR 8:030.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure by which post-race samples are selected for testing. The regulation sets forth varying procedures to be followed depending upon the type of race that is being run.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly regulate the collection of samples from horses on racing dates at race meetings in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are collected

systematically and securely on racing days and in a manner that is consistent with the integrity of racing.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to 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: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the collection of medication samples on racing days at horse racing meetings in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with these requirements for many years.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

#### 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 Kentucky Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.300.

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? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(New Administrative Regulation)**

**810 KAR 9:010. Hearings, reviews and appeals.**

RELATES TO: KRS 230.215(2), 230.310(2), 230.320, 230.330

STATUTORY AUTHORITY: KRS 230.215(2), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Commission with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.320(1) authorizes the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant an appeal and administrative hearing in accordance with KRS Chapter 13B to any person whose license is denied, suspended, or revoked or who is assessed an administrative fine or required to return a purse. KRS 230.320(5) authorizes the commission to determine that certain appeals are frivolous and requires prescription of the factors leading to such a determination. KRS 230.370 authorizes the commission to promulgate any reasonable and necessary administrative regulation for the conduct of hearings before it.

**Section 1. Stewards' and Judges' Hearings.**

(1) A stewards' or judge's hearing, as applicable, shall be conducted by a state steward or a state judge unless waived in writing by the party charged with the violation.

(2) At least two (2) stewards or judges must be present at all times during the hearing. All three (3) stewards or judges shall review the evidence and testimony prior to issuing a ruling. A ruling shall be made by all three (3) stewards or judges sitting in the matter.

(3) A party charged with a violation other than a routine riding offense occurring in a race shall be given written notice of the stewards' or judges' hearing, unless waived in writing by the party charged.

(4) All stewards' and judges' hearings shall be closed, and the

stewards and judges shall make no public announcement concerning a matter under investigation until the conclusion of the hearing.

(5) A state steward or a state judge shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(6) All testimony shall be given under oath and a record shall be kept, either by use of an audio recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards or judges shall not be required to receive testimony in cases where their ruling is based solely upon a review of the video replay of a race.

(7) If, after the hearing, the stewards or judges find that a statute or an administrative regulation has been violated, they shall promptly issue a written ruling setting forth the:

(a) Full name of every person charged with the violation;

(b) Identification of licensees charged with the violation;

(c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated;

(d) Findings; and

(e) Penalty.

(8) Copies of the ruling shall be delivered to:

(a) Each party in interest;

(b) The commission; and

(c) The office of the Association of Racing Commissioners International, and in Standardbred racing, to the United States Trotting Association.

(9) Any party who is the subject of any order or ruling of the stewards or judges may apply for a commission hearing pursuant to KRS Chapter 13B, except as to:

(a) Determinations of whether or not a horse or horses in a race shall be disqualified for fouls committed during the race; or

(b) Findings of fact as to all matters occurring during and incident to the running of a race.

(10) An application to the commission for review of a stewards' or judges' order or ruling shall be made within ten (10) days after the order or ruling is issued in writing on the "Notice of Appeal," KHRC 9-010-1.

(11) An application to the executive director for a stay of a stewards' or judges' order or ruling shall be made in writing within ten (10) days after the order or ruling is issued on the "Request for Stay Pending Appeal", KHRC 9-010-2.

Section 2. Frivolous Appeals. The commission may determine that an appeal of a stewards' or judges' order or ruling, or any other administrative appeal to the racing commission by a licensee or other person participating in Kentucky horse racing, is frivolous. An appeal shall be presumed to be frivolous if:

(1) The applicant seeks review by the commission but fails, without good cause, to appear for proceedings;

(2) The applicant attends the commission hearing but fails, without good cause, to offer evidence to support the application for review; or

(3) The appeal is totally lacking in merit such that it appears to have been taken in bad faith.

**Section 3. Commission Hearings.**

(1) Except where precluded by another provision of KRS Chapter 230 or this administrative regulation, commission hearings shall be conducted in accordance with KRS Chapter 13B.

(2) Copies of all final commission orders or rulings related to licensing of individuals shall be forwarded to the office of the Association of Racing Commissioners International, and, in standardbred racing, to the United States Trotting Association.

Section 4. Appeal from Commission Order. Any person or licensee aggrieved by any order or decision of the commission may appeal to the Franklin Circuit Court in accordance with KRS 230.330.

**Section 5. Incorporation by Reference.**

## VOLUME 45, NUMBER 6 – DECEMBER 1, 2018

(1) The following material is incorporated by reference:

- (a) The "Notice of Appeal", KHRC 9-010-1; and
- (b) The "Request for Stay Pending Appeal", KHRC 9-010-2.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 27, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 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 through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for stewards' and judges' hearings and commission hearings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enforce the Kentucky Horse Racing Commission's regulations through the establishment of hearing procedures to adjudicate violations of the regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation conforms to the authorizing statutes by allowing the commission to enforce its regulations by establishing a procedure to adjudicate violations of the commission's regulations. KRS 230.370 authorizes the commission to promulgate any reasonable and necessary administrative regulation for the conduct of hearings before it.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation permits the commission to adjudicate violations of the commission's regulations in a structured and consistent way that comports with the requirements of due process of law.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: 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: The Commission and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed 22,745 individuals to participate in horse racing. In addition, seven racing associations, three totalizator companies, and ten advance deposit wagering companies are currently licensed by the Commission and potentially affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons charged with a violation of the Kentucky Horse Racing Commission's regulations will be required to conform to the procedures established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities participating in the administrative process will face potential costs of subpoenas and witnesses consistent with existing practices of the commission under 810 KAR 1:029 and 811 KAR 1:105.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any necessary funding will be provided from the budget of the Kentucky Horse Racing Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

### 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 Kentucky Horse Racing Commission 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 230.215, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No revenue will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No revenue will be required to administer this regulation for the first year.

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: None.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Repealer)**

**811 KAR 1:301. Repeal of 811 KAR 1:010; 1:015; 1:020; 1:025; 1:030; 1:035; 1:037; 1:040; 1:045; 1:050; 1:055; 1:060; 1:065; 1:070; 1:075; 1:080; 1:085; 1:090; 1:093; 1:095; 1:100; 1:105; 1:110; 1:115; 1:120; 1:130; 1:140; 1:150; 1:185; 1:215; 1:220; 1:225; 1:230; 1:260; 1:280; 1:285; 1:290; 1:300.**

RELATES TO: KRS 230.225(5)

STATUTORY AUTHORITY: KRS 230.215

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. 811 KAR 1:010; 1:015; 1:020; 1:025; 1:030; 1:035; 1:037; 1:040; 1:045; 1:050; 1:055; 1:060; 1:065; 1:070; 1:075; 1:080; 1:085; 1:090; 1:093; 1:095; 1:100; 1:105; 1:110; 1:115; 1:120; 1:130; 1:140; 1:150; 1:185; 1:215; 1:220; 1:225; 1:230; 1:260; 1:280; 1:285; 1:290; 1:300. The necessary content of these repealed provisions has been moved to subject-matter specific regulations within KAR Title 810.

Section 1. The following regulations are hereby repealed:

- (1) 811 KAR 1:010, Associations;
- (2) 811 KAR 1:015, Race officials;
- (3) 811 KAR 1:020, Registration and identification of horses;
- (4) 811 KAR 1:025, Farm, corporate, or stable name;
- (5) 811 KAR 1:030, Eligibility and classification;
- (6) 811 KAR 1:035, Claiming races;
- (7) 811 KAR 1:037, Licensing of racing associations conducting Standardbred racing;
- (8) 811 KAR 1:040, Stakes and futurities;
- (9) 811 KAR 1:045, Entries;
- (10) 811 KAR 1:050, Entries;
- (11) 811 KAR 1:055, Declaration to start;
- (12) 811 KAR 1:060, Postponement, rescheduling, purses;
- (13) 811 KAR 1:065, Starting;
- (14) 811 KAR 1:070, Licensing Standardbred racing;
- (15) 811 KAR 1:075, Racing and track rules;
- (16) 811 KAR 1:080, Placing; money distribution;
- (17) 811 KAR 1:085, Conduct of racing;
- (18) 811 KAR 1:090, Medication; testing procedures; prohibited practices;
- (19) 811 KAR 1:093, Drug, medication, and substance

classification schedule and with draw guidelines;

- (20) 811 KAR 1:095, Disciplinary measures and penalties;
- (21) 811 KAR 1:100, Protests;
- (22) 811 KAR 1:105, Review and appeal;
- (23) 811 KAR 1:110, Timing and records;
- (24) 811 KAR 1:115, Associations' licenses;
- (25) 811 KAR 1:120, Licensing of race meetings;
- (26) 811 KAR 1:130, Security;
- (27) 811 KAR 1:140, Post time; races per program; postponements;
- (28) 811 KAR 1:150, Officials; deputies and assistants;
- (29) 811 KAR 1:185, Records, audits, and reports;
- (30) 811 KAR 1:215, Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund;
- (31) 811 KAR 1:220, Harness racing at county fairs;
- (32) 811 KAR 1:225, Substance abuse by authority employees and licensees;
- (33) 811 KAR 1:230, Frivolous appeals;
- (34) 811 KAR 1:240, Out-of-competition testing;
- (35) 811 KAR 1:260, Post-race sampling and testing procedures;
- (36) 811 KAR 1:280, Calculation of payouts and distribution of pools;
- (37) 811 KAR 1:285, Advance deposit account wagering;
- (38) 811 KAR 1:290, Licensing totalizator companies; and
- (39) 811 KAR 1:300, International medication protocol as a condition of a race.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 28, 2018, at 1:30 p.m., at the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 40511. 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 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 if received at or before 11:59 p.m. on December 31, 2018. 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: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals several administrative regulations within 811 KAR Chapter 1 because contemporaneous amendments to the horse racing regulatory regime will render the individual regulations unnecessary. Specifically, this administrative regulation repeals 811 KAR 1:010; 1:015; 1:020; 1:025; 1:030; 1:035; 1:037; 1:040; 1:045; 1:050; 1:055; 1:060; 1:065; 1:070; 1:075; 1:080; 1:085; 1:090; 1:093; 1:095; 1:100; 1:105; 1:110; 1:115; 1:120; 1:130; 1:140; 1:150; 1:185; 1:215; 1:220; 1:225; 1:230; 1:260; 1:280; 1:285; 1:290; 1:300. These administrative regulations are no longer required because by separate regulation amendments, the content has been moved to subject-matter specific regulations within this chapter.



(b) The necessity of this administrative regulation: This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing horse racing in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.515 authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing horse racing in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Horse Racing Commission is charged with the responsibility to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. This administrative regulation, in concert with contemporaneously filed administrative regulations, are necessary to carry out Chapter 230 of the Kentucky Revised Statutes with a revised and improved regulatory regime governing horse racing 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: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, licensed participants in racing in Kentucky, the seven Kentucky racetracks, and the wagering public will be affected by this administrative regulation. During the year 2017, the Commission licensed 22,745 individuals to participate in horse racing. The numbers of licensees are consistent from year to 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: This administrative regulation requires no action by the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not require any action from the entities identified in question 3.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative 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: There is no funding necessary to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The implementation of this administrative regulation requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repeals the subject administrative regulations, and all regulated entities are treated equally.

#### 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 Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215.

(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? This administrative regulation will not generate any revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Repealer)

**811 KAR 2:301. Repeal of 811 KAR 2:015; 2:020; 2:025; 2:030; 2:035; 2:040; 2:045; 2:050; 2:056; 2:065; 2:070; 2:075; 2:080; 2:085; 2:090; 2:093; 2:096; 2:100; 2:105; 2:110; 2:130; 2:140; 2:150; 2:170; 2:180; 2:185; 2:190; 2:200; 2:300.**

RELATES TO: KRS 230.225(5)

STATUTORY AUTHORITY: KRS 230.215

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. Repeal of 811 KAR 2:015; 2:020; 2:025; 2:030; 2:035; 2:040; 2:045; 2:050; 2:056; 2:065; 2:070; 2:075; 2:080; 2:085; 2:090; 2:093; 2:096; 2:100;



2:105; 2:110; 2:130; 2:140; 2:150; 2:170; 2:180; 2:185; 2:190; 2:200; 2:300. The necessary content of these repealed provisions has been moved to subject-matter specific regulations within KAR Title 810.

Section 1. The following regulations are hereby repealed:

- (1) 811 KAR 2:015, Commission; administrative staff;
- (2) 811 KAR 2:020, Licensing quarter horse, appaloosa or Arabian racing;
- (3) 811 KAR 2:025, Stewards;
- (4) 811 KAR 2:030, Racing officials;
- (5) 811 KAR 2:035, Associations;
- (6) 811 KAR 2:040, Owners;
- (7) 811 KAR 2:045, Trainers;
- (8) 811 KAR 2:050, Jockeys;
- (9) 811 KAR 2:056, Authorized agents;
- (10) 811 KAR 2:065, Registration; racing requirements;
- (11) 811 KAR 2:070, Entries, subscriptions, and declarations;
- (12) 811 KAR 2:075, Weight allowances;
- (13) 811 KAR 2:080, Claiming races;
- (14) 811 KAR 2:085, Running of the race;
- (15) 811 KAR 2:090, Objections and complaints;
- (16) 811 KAR 2:093, Drug, medication, and substance classification schedule and with draw guidelines;
- (17) 811 KAR 2:096, Medication; testing procedures; prohibited practices;
- (18) 811 KAR 2:100, Disciplinary measures and penalties;
- (19) 811 KAR 2:105, Hearings, review and appeals;
- (20) 811 KAR 2:110, Substance abuse by commission employees and licensees;
- (21) 811 KAR 2:130, Frivolous appeals;
- (22) 811 KAR 2:140, Licensing of racing associations conducting quarter horse, appaloosa, and Arabian racing;
- (23) 811 KAR 2:150, Out of competition testing;
- (24) 811 KAR 2:170, Post-race sampling and testing procedures;
- (25) 811 KAR 2:180, Calculation of payouts and distribution of pools;
- (26) 811 KAR 2:185, Advance deposit account wagering;
- (27) 811 KAR 2:190, Kentucky Quarter Horse, Paint Horse Appaloosa and Arabian Development Fund;
- (28) 811 KAR 2:200, Licensing totalizator companies; and
- (29) 811 KAR 2:300, International medication protocol as condition of a race.

FRANKLIN S. KLING, JR., Chairman  
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD**

A public hearing on this administrative regulation shall be held on December 28, 2018, at 1:30 p.m., at the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 40511. 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 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 if received at or before 11:59 p.m. on December 31, 2018. 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: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals several administrative regulations within 811 KAR Chapter 2 because contemporaneous amendments to the horse racing regulatory regime will render the individual regulations unnecessary. Specifically, this administrative regulation repeals 811 KAR 2:015; 2:020; 2:025; 2:035; 2:040; 2:045; 2:050; 2:056; 2:065; 2:070; 2:075; 2:080; 2:085; 2:090; 2:093; 2:096; 2:100; 2:105; 2:110; 2:130; 2:140; 2:150; 2:170; 2:180; 2:185; 2:190; 2:200; and 2:300. These administrative regulations are no longer required because by separate regulation amendments, the content has been moved to subject-matter specific regulations within this chapter.

(b) The necessity of this administrative regulation: This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing horse racing in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.515 authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. This administrative regulation, in concert with contemporaneously filed administrative regulations, is necessary to revise the regulatory regime governing horse racing in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky Horse Racing Commission is charged with the responsibility to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. This administrative regulation, in concert with contemporaneously filed administrative regulations, are necessary to carry out Chapter 230 of the Kentucky Revised Statutes with a revised and improved regulatory regime governing horse racing 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: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, licensed participants in racing in Kentucky, the seven Kentucky racetracks, and the wagering public will be affected by this administrative regulation. During the year 2017, the Commission licensed 22,745 individuals to participate in horse racing. The numbers of licensees are consistent from year to 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: This administrative regulation requires no action by the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The administrative regulation will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not require any action from the entities identified in question 3.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative 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: There is no funding necessary to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The implementation of this administrative regulation requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repeals the subject administrative regulations, and all regulated entities are treated equally.

#### 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 Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215.

(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? This administrative regulation will not generate any revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of November 13, 2018**

**Call to Order and Roll Call**

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 13, 2018, at 1:00 p.m. in Room 149 of the Capitol Annex. Senator Harris Co-Chair, called the meeting to order, the roll call was taken. The minutes of the October 2018 meeting were approved.

**Present were:**

**Members:** Senators Ernie Harris, Perry Clark, Alice Forgy Kerr, and Julie Raque Adams; and Representatives David Hale, Mary Lou Marzian, Jason Petrie and Tommy Turner.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

**Guests:** Lindsay Hughes Thurston, Secretary of State; Chris Hunt, Farrah Petter, Auditor of Public Accounts; Sharron Burton, Personnel Cabinet; Todd Renner, Lisa Swiger, Department of Revenue; Leanne Diakov, Board of Medical Licensure; Chris Garland, Evan Jones, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, Ashley Short, Department of Corrections; Todd Allen, David Cook, Department of Education; Beverly Dearborn, Anthony Huggins, Division of Unemployment Insurance; Steve Humphress, Lee Walters, Department of Alcoholic Beverage Control; Tim House, Steven Milby, David Startzman, Department of Housing, Buildings and Construction; Cannon Armstrong, Doug Hardin, Department of Charitable Gaming; Lee Guice, Donna Little, Jonathan Scott, Brandon Smith, Department for Medicaid Services; Stephanie Brammer-Barnes, Molly Lewis, Office Inspector General; Suzette Kimbell, Office of Secretary; Julie Brooks, Eric Perry, Department for Public Health; Mary Carpenter, Elizabeth Caywood, Jessica Peay, Brian Hubbard, Maribeth Schneber-Rhemrev, Todd Trapp, Department for Community Based Services; Ervin Klein, Nancy Galvagni, Sheila Schuster, and Ben Carter.

**The Administrative Regulation Review Subcommittee met on Tuesday, November 13, 2018, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**STATE BOARD OF ELECTIONS: Forms and Procedures**

31 KAR 4:100 & E. Evaluation of precinct election officers. Lindsay Thurston, senior advisor, represented the Secretary of State.

Senator Kerr congratulated Ms. Thurston on her recent election as a Fayette County judge.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**AUDITOR OF PUBLIC ACCOUNTS: Audits**

45 KAR 1:050. Audits of fiscal courts. Chris Hunt, general counsel, and Farrah Petter, audit manager, represented the auditor.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified**

101 KAR 2:210 & E. Plan Year Handbook for the Public Employee Health Insurance Program. Sharron Burton, general counsel, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Burton stated that this administrative regulation was a formality to codify requirements already disseminated.

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; General Administration**

103 KAR 15:050. Filing dates and extensions. Todd Renner, executive director, Office of Tax Policy and Regulation, and Lisa Swiger, tax policy research consultant, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 15:060. Estimated tax, amended declarations; short years.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 15:180. Kentucky new markets development program tax credit.

In response to questions by Co-Chair Harris, Mr. Renner stated that the new market development program tax credit was part of a federal program to develop underdeveloped areas. Kentucky's program essentially piggybacked onto the federal program. Because funding was allocated in blocks, this administrative regulation had to be updated to reflect the new time period of the next funding block.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 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.

103 KAR 15:195. Endow Kentucky Tax Credit.

**Income Tax; Corporations**

103 KAR 16:381. Repeal of 103 KAR 016:380.

**Income Tax, Individual**

103 KAR 17:010. Residence.

In response to a question by Co-Chair Harris, Mr. Renner stated that this administrative regulation and 103 KAR 17:020 were amended to update definitions for clarity commensurate with House Bill 487 from the 2018 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 17:020. Combined individual returns.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 17:060. Income subject to taxation; portions.

A motion was made and seconded to approve the following amendment: to amend the RELATES TO paragraph and Sections 2 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Income Tax; Withholding**

103 KAR 18:050 & E. Withholding statements.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 18:081. Repeal of 103 KAR 018:080 and 103 KAR 018:160.

103 KAR 18:110. Voluntary withholding.

103 KAR 18:120. Security for compliance; bonds.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 18:150. Employer's withholding reporting requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

**BOARDS AND COMMISSIONS: Board of Medical Licensure**

201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances. Leanne Diakov, general counsel, represented the board.

In response to a question by Senator Clark, Ms. Diakov stated that the National Transportation Safety Board recommended that each state's administrative regulations pertaining to persons who prescribe or dispense controlled substances should establish that the physician, prescriber, or dispenser shall have the duty to inform the patient of the effect on the patient's medical condition and ability to operate any mode of transportation.

In response to a question by Co-Chair Harris, Ms. Diakov stated that other agencies, such as the Board of Nursing and the Board of Podiatry, had made or were making similar changes in their administrative regulations.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Hunting and Fishing**

301 KAR 3:100. Special commission permits. Chris Garland, assistant director, Division of Wildlife, and Evan Jones, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

**DEPARTMENT OF AGRICULTURE: Industrial Hemp**

302 KAR 50:080. Materials incorporated by reference. Clint Quarles, staff attorney, represented the department.

In response to questions by Senator Clark, Mr. Quarles stated that, in addition to hemp oils, other products being researched included liners and interior automobile parts, packaging materials, an additive to plastics (or in lieu thereof), insulation replacement, and an additive to concrete to increase psi. Additionally, hemp roots were sometimes used in items such as salves.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:020 & E. Corrections policies and procedures. Amy Barker, assistant general counsel, and Ashley Short, corrections program administrator, 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 clarify various provisions, update edition dates, and comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:999. Corrections secured policies and procedures.

This administrative regulation was reviewed and amended, without objection and with agreement of the agency, by the subcommittee in closed session pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Chief State School Officer**

701 KAR 5:140. District of innovation. Todd Allen, deputy general counsel, and David Cook, director, Division of Innovation and Partner Engagement, represented the department.

In response to questions by Representative Petrie, Mr. Cook stated that Kentucky currently had six (6) districts of innovation. At the high point of the program, there were ten (10). Amendments to this administrative regulation were for the purpose of allowing individual schools to become schools of innovation in order to promote the program.

In response to a question by Co-Chair Harris, Mr. Cook stated that schools and districts of innovation had broader flexibility for creative instruction.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance**

787 KAR 1:010 & E. Application for employer account; reports. Beverly Dearborn, workforce development manager, and Anthony Hudgins, assistant director, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Conduct of Business; Employees**

804 KAR 5:021. Repeal of 804 KAR 005:020. Steve Humphress, general counsel, and Lee Walters, counsel, represented the department.

**Transportation of Alcoholic Beverages**

804 KAR 8:050. Identification of vehicles used to transport alcoholic beverages.

**Department of Housing, Buildings, and Construction: General Section**

815 KAR 2:010. Continuing education. Tim House, deputy commissioner; Steven Milby, commissioner; and David Startzman, general counsel, represented the department. Ervin Klein, legislative agent, Independent Electrical Contractors of Kentucky and Southern Indiana, appeared in opposition to 815 KAR 35:060 and 35:090.

In response to a question by Co-Chair Harris, Mr. House stated that the department was revising continuing education requirements for consistency among the nine (9) licensure programs. For the plumbing industry, the department believed

that six (6) annual continuing education hours were as effective as eight (8).

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

815 KAR 2:020. Continuing education course and provider approval.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

815 KAR 2:030. Vehicle identification.

815 KAR 2:040. Fees and refunds.

#### **Building Code Enforcement: Elevator Safety**

815 KAR 4:030. Elevator licensing.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 5, and 7 through 9 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the licensure application forms to change: (a) the criminal conviction statement for clarity; and (b) the KHEAA statement. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 4:071. Repeal of 815 KAR 004:040, 815 KAR 004:050, 815 KAR 004:060, and 815 KAR 004:070.

#### **Kentucky Building Code**

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 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.

#### **Division of Heating, Ventilation, and Air Conditioning: Heating, Ventilation, and Air Conditioning Licensing Requirements**

815 KAR 8:010. Licensing requirements for master contractors and journeyman HVAC mechanics.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the licensure application forms to change: (a) the criminal conviction statement for clarity; and (b) the KHEAA statement. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 8:030. Apprentice HVAC mechanic registration and certification requirements.

In response to questions by Co-Chair Harris, Mr. House stated that the original requirement established that anyone practicing HVAC work shall register with the cabinet as an apprentice; however, the department did not have statutory authority for an official HVAC apprenticeship program. The department amended this administrative regulation to make the registration voluntary but would prefer not to regulate an apprenticeship program at all due to recordkeeping and processing requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 8:091. Repeal of 815 KAR 8:020, 815 KAR 8:035,

815 KAR 8:050, 815 KAR 8:060, 815 KAR 8:090, and 815 KAR 8:095.

#### **Division of Plumbing: Boilers and Pressure Vessels**

815 KAR 15:080. Boiler and pressure vessel licenses.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, Sections 1 through 3, and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Plumbing**

815 KAR 20:030. Plumbing licenses.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph, Sections 2 through 4, and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:041. Repeal of 815 KAR 20:012, 815 KAR 20:015, 815 KAR 20:018, 815 KAR 20:032, 815 KAR 20:034, and 815 KAR 20:040.

#### **Division of Fire Prevention: Fire Protection, Sprinkler Contractors, and Inspectors**

815 KAR 22:011. Repeal of 815 KAR 022:010.

#### **Building Code Enforcement: Manufactured Homes and Recreational Vehicles**

815 KAR 25:001. Definitions for 815 KAR Chapter 025.

In response to questions by Co-Chair Harris, Mr. House stated that a B1 seal indicated that an inspection had been conducted on a used manufactured home, the results of which were that the home was habitable. A B2 seal indicated that an inspection had been conducted on a used manufactured home, the results of which were that the home was uninhabitable and for salvage. A new manufactured home would have a HUD seal. A used manufactured home with a B2 seal may have improvements and be reevaluated for a B1 seal.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 25:020. Recreational vehicles.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 2, 3, and 7 through 9; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 25:040. Fire safety requirements in manufactured and mobile homes.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 25:050. Administration and enforcement of manufactured housing construction standards.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1 through 9, 11, and 13; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the

amendments were approved.

815 KAR 25:060. Licensing and certifications with manufactured homes and mobile homes.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1, 3, and 6; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 25:081. Repeal of 815 KAR 025:070 and 815 KAR 025:080.

815 KAR 25:090. Site preparation, installation, and inspection requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY and 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.

815 KAR 25:100. Alternative dispute resolution and mediation program.

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 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.

#### Electrical Division

815 KAR 35:015. Certification of electrical inspectors.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 35:020. Electrical inspections.

815 KAR 35:060. Licensing of electrical contractors, master electricians, and electricians.

A motion was made and seconded to approve the following amendments: to amend material incorporated by reference to clarify checkbox statements regarding convictions and student loan default. Without objection, and with agreement of the agency, the amendments were approved.

Mr. Klein stated that Senate Bill 78 from the 2018 Regular Session of the General Assembly authorized a path to electrical licensing if an individual completed two (2) years of verifiable experience in the electrical trade and a minimum of two (2) years in an electrical training course. The licensee shall then complete the remaining electrical training required within four (4) years of licensure. The Independent Electrical Contractors of Kentucky and Southern Indiana requested that language be added to this administrative regulation to clarify that the two (2) years of verifiable experience and the two (2) years in an electrical training course run consecutively, not concurrently. This was the intent expressed with the sponsor during the development of Senate Bill 78. The Independent Electrical Contractors of Kentucky and Southern Indiana also requested that language be added to this administrative regulation to require those obtaining licensure pursuant to this new pathway to submit information regarding progress toward completion of the remaining electrical training with each application renewal.

In response to a question by Co-Chair Harris, Mr. House stated that it would not be beneficial to defer consideration of this administrative regulation and 815 KAR 35:090 to the December

2018 subcommittee meeting. These were not apprenticeship programs.

815 KAR 35:080. Electrical code of ethics.

815 KAR 35:090. Electrical Training Program standards.

Mr. Klein stated that the Independent Electrical Contractors of Kentucky and Southern Indiana requested that course requirements be revised commensurate with the U.S. Department of Labor's apprenticeship program requirements. This would lead to problems for licensees.

Mr. House stated that the department did not have statutory authority for apprenticeship programs. The program established in 815 KAR 35:090 was an educational program, not an apprenticeship program.

815 KAR 35:101. Repeal of 815 KAR 035:100.

#### Department of Charitable Gaming

820 KAR 1:001. Definitions. Cannon Armstrong, commissioner, and Doug Hardin, staff attorney, represented the department.

In response to a question by Co-Chair Harris, Mr. Hardin stated that all issues of concern had been worked out with stakeholders.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

820 KAR 1:005. Charitable gaming licenses and exemptions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:011. Repeal of 820 KAR 1:010, 1:015, 1:016, 1:017, 1:026, 1:027, 1:028, 1:029, 1:033, 1:034, 1:036, 1:044, 1:056, 1:058, 1:100, 1:110, 1:120.

820 KAR 1:025. Reports.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:032. Pulltabs.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 7, 13 through 16, 19 through 21, and 23 through 33 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Sections 26 through 28 to make changes to the point of sale requirements, device construction requirements, and software construction requirements. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:042. Bingo.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 5, 7 through 9, 11 through 17, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A and make technical changes; and (2) to amend Section 14 to remove the time constraint requirement on the sale of paper or electronic pulltabs prior to the start of a bingo session and replace it with a prior approval requirement. Without objection, and with agreement of the agency, the amendments were approved.



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820 KAR 1:050. Raffles.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

820 KAR 1:055. Charity fundraising event standards.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:057. Recordkeeping.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 through 8, 10, 12, 14, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A and make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:060. Prohibited conduct.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:125. Gaming inspections.

820 KAR 1:130. Administrative actions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A and make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:135. Disposal of gaming supplies.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Policy and Operations: Medicaid**

895 KAR 1:001. Definitions for 895 KAR Chapter 001. Lee Guice, director, Division of Policy and Operations; Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs; Jonathan Scott, regulatory and legislative adviser; and Brandon Smith, executive director, Office of Legislative and Regulatory Affairs, represented the division. Nancy Galvagni, senior vice president, Kentucky Hospital Association, appeared in support of the subcommittee amendment to 895 KAR 1:050. Dr. Sheila Schuster, executive director, Advocacy Action Network, appeared in opposition to 895 KAR 1:020.

In response to questions by Representative Marzian, Mr. Smith stated that there had been litigation regarding these administrative regulations and the division was currently involved in a waiver reauthorization process with CMS. Proceeding with this package of administrative regulations was not premature because these administrative regulations would only become effective if CMS approved Kentucky's waiver and a funding source was available. If only a portion of the requirements were approved by CMS, the division would file an emergency administrative regulation.

Representative Marzian requested to be recorded as voting in opposition to 895 KAR 1:001, 1:010, 1:015, 1:020, 1:025, 1:030, 1:035, 1:040, 1:045, 1:050, and 1:055.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:010. Eligibility for Kentucky HEALTH program.

A motion was made and seconded to approve the following amendments: to amend Sections 3 through 6, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:015. Premium payments within the Kentucky HEALTH programs.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:020. PATH requirement for the Kentucky HEALTH program.

Dr. Schuster stated that the Advocacy Action Network was opposed to this administrative regulation, which relied entirely on an internet-based system for reporting community engagement compliance. Broadband was not accessible in all parts of Kentucky, and users had limited financial resources. Kentucky had stopped nonemergency transportation services, which might have enabled users to have internet access via local libraries. Recipients might be denied benefits and services for failure to report due to lack of internet access. While the cabinet stated there would be other communication options, this administrative regulation did not have reporting provisions other than via internet. The Advocacy Action Network requested that language be added to include alternative provisions.

In response to a question by Co-Chair Harris, Dr. Schuster stated that Medicaid recipients were not required to report community engagement compliance until these requirements become effective.

In response to a question by Senator Raque Adams, Dr. Schuster stated that the Advocacy Action Network supported a written format as an alternative to internet reporting.

In response to questions by Representative Marzian, Mr. Smith stated that the division did not believe there was a need to defer consideration of this matter. Studies demonstrated that internet access was a key feature for improving health outcomes. Rather than removing internet reporting requirements, the division planned to have training opportunities for users. Medically frail individuals were exempt from these reporting requirements. DCBS offices were being prepared to respond in person and via telephone to assist users. If a user misses a compliance reporting deadline, a three (3) month notice would be sent to the recipient to address the issue. Additional outreach by telephone was an additional possibility.

In response to questions by Co-Chair Harris, Mr. Smith stated that home visits to assist users were a possibility but were not directly mandated. Telephonic and written correspondence was also available.

In response to questions by Representative Petrie, Mr. Smith stated that assistance would also be available from Workforce Development career centers. Users who were homebound and did not have readily available internet access were exempt from internet reporting requirements. The number of users who might need access was currently indeterminable. This administrative regulation did not expressly provide for alternatives to internet reporting for those not exempted. If a user missed a reporting deadline, there was an outreach process to assist with compliance.

A motion was made and seconded to approve the following amendments: to amend Sections 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:025. Beneficiary premiums.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO paragraph, and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the

agency, the amendments were approved.

895 KAR 1:030. Establishment and use of the MyRewards program.

A motion was made and seconded to approve the following amendment: to amend Sections 3 and 6 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:035. Covered services within the Kentucky HEALTH program.

A motion was made and seconded to approve the following amendment: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:040. Deductible accounts within the Kentucky HEALTH program.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:045. Accommodation, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:050. Enrollment and reimbursement for providers in the Kentucky HEALTH program.

Senator Raque Adams stated that the proposed subcommittee amendment was at the request of the cabinet in conjunction with the Kentucky Hospital Association for the purposes of clarifying requirements.

Ms. Galvagni stated that the Kentucky Hospital Association was in strong support of the subcommittee amendment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1, 2, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 4(2) to establish that: (a) a hospital seeking reimbursement for non-covered services may use its consent for services form to comply with the written agreement requirement if it provides informed consent and is signed and dated by the beneficiary; and (b) the beneficiary reimbursement procedures for non-covered services do not apply if complying with 42 U.S.C. 1395dd until the beneficiary has been stabilized and do apply after a beneficiary has been stabilized if billing a suspended Kentucky HEALTH beneficiary. Without objection, and with agreement of the agency, the amendments were approved.

895 KAR 1:055. Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Division of Certificate of Need: State Health Plan**

900 KAR 5:020 & E. State Health Plan for facilities and services. Molly Lewis, deputy inspector general, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to update the edition date of the State Health Plan; and (2) to amend the State Health Plan incorporated by reference to insert the review criteria for magnetic

resonance imaging equipment under Diagnostic and Therapeutic Equipment and Procedures. Without objection, and with agreement of the agency, the amendments were approved.

#### **Certificate of Need**

900 KAR 6:020. Certificate of need application fee schedule.

#### **Medical Review Panels**

900 KAR 11:010 & E. Medical review panels. Suzette Kimbell, branch coordinator, and Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the division.

#### **Department for Public Health: Division of Health Care: Health Services and Facilities**

902 KAR 20:300. Operation and services; nursing facilities. Stephanie Brammer – Barnes, regulation coordinator, represented the Office of Inspector General.

#### **Department for Public Health: Division of Public Health Protection and Safety: Radiology**

902 KAR 100:018. Repeal of 902 KAR 100:017, 902 KAR 100:060, and 902 KAR 100:090. Julie Brooks, regulation coordinator, and Eric Perry, radiation health specialist, represented the division.

In response to a question by Co-Chair Harris, Ms. Brooks and Mr. Perry stated that this package of administrative regulations was for compliance with federal updates from the Nuclear Regulatory Commission.

902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 100:052. Specific domestic licenses of broad scope for by-product material.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A.

902 KAR 100:070. Packaging and transportation of radioactive material.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 100:072. Medical use of byproduct material.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

902 KAR 100:100. Licenses for industrial radiography and radiation safety requirements for industrial radiographic operations.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

902 KAR 100:142. Licenses and radiation safety requirements for well logging.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

**Department for Medicaid Services: Division of Policy and Operations: Medicaid Services**

907 KAR 1:025 & E. Payment for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit. Jonathan Scott, regulatory and legislative adviser, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the TITLE to clarify the subject matter; and (3) to amend Section 7(1)(c) to require a nursing facility with a distinct part brain injury unit to be accredited after the first year of participation by the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program**

921 KAR 3:025. Technical requirements. Elizabeth Caywood, deputy commissioner; Bryan Hubbard, commissioner; and Maribeth Schneber-Rhemrev, director, represented the division. Ben Carter, senior litigation and advocacy counsel, Kentucky Equal Justice Center, appeared in opposition to these administrative regulations.

In response to questions by Representative Petrie, Mr. Hubbard stated that a noncustodial parent meant the parent who did not have custody of the child and who likely did not reside with the child. The noncustodial parent had been shown to be the parent of the child and had a legal obligation to remit money to support the child. Interaction with the noncustodial parent and the child was varied, depending on family dynamics. These administrative regulations were in compliance with recent changes to domestic law.

Mr. Carter stated that the Kentucky Equal Justice Center, as well as Kentucky Voices for Health, Kentucky Center for Economic Policy, ACLU, and Catholic Conference of Kentucky were opposed to these administrative regulations because this was the wrong approach. The listed stakeholders advocated ensuring that noncustodial parents paid child support; however, these requirements actually incentivized noncustodial parents not to pay. Failure to pay child support was already a crime; therefore, these requirements were redundant. These requirements would increase food insecurity in areas that were already suffering. This program would increase pressure on the poor but have little impact on child-support payments. This program would have a disproportional impact on Eastern Kentucky. These requirements might also have a negative impact on those who were or had been incarcerated because incarcerated people are often behind on child-support payments. A three (3) month compliance window was inadequate. This program was not expected to prove successful from a cost – benefit calculation.

In response to a question by Co-Chair Harris, Mr. Hubbard stated that in order for a SNAP benefit suspension to apply, there had to be an active current support order and the noncustodial parent would not have paid the current full support for the present month and would have had an arrearage obligation of \$500 or greater. The age of the youngest child shall be less than eighteen (18) years. In order to have SNAP benefits reinstated, the noncustodial parent shall no longer have a child-support case, the youngest child shall reach eighteen (18) years, the noncustodial parent shall pay the full balance due (including arrearage), or the arrearage balance is below \$500. There were exemptions, such as for those in a drug treatment program, certain phases of incarceration, etc.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to add additional exemptions for participation by individuals who are delinquent in court-ordered support payments.

Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:035. Certification process.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Division of Protection and Permanency: Child Welfare**

922 KAR 1:411. Repeal of 922 KAR 001:410. Laura Begin, regulation coordinator and liaison; Mary Carpenter, manager, Adoption Branch; and Elizabeth Caywood, deputy commissioner, represented the division.

**Child Welfare**

922 KAR 1:560 & E. Putative father registry and operating procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A and make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred or removed from the November 13, 2018, subcommittee agenda:**

**DEPARTMENT OF STATE: Kentucky Registry of Election Finance: Electronic Voting Systems**

32 KAR 1:030 & E. Election finance statement forms; campaign contributions or expenditures in excess of \$3,000.

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Miscellaneous**

103 KAR 19:010. Computation of income; estates and trusts.

**BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

**Board of Chiropractic Examiners**

201 KAR 21:015. Code of ethical conduct and standards of practice.

201 KAR 21:045. Specialties.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 2:095. Importation of cervid carcasses and parts.

**ENERGY AND ENVIRONMENT: Department for Environmental Protection: Division for Air Quality: Permits, Registrations, and Prohibitory Rules**

401 KAR 52:050. Permit application forms.

401 KAR 52:070. Registration of air contaminant sources.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing**

601 KAR 2:030 & E. Ignition interlock.

**PUBLIC PROTECTION CABINET: Workers' Compensation Funding Commission**

803 KAR 30:010. Special fund assessments.

803 KAR 30:021. Repeal of 803 KAR 030:020.

**Real Estate Authority: Board of Home Inspectors**

815 KAR 6:001. Definitions for 815 KAR Chapter 6.

815 KAR 6:010. Licensing requirements.

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815 KAR 6:030. Standards of conduct, complaints, and discipline.

815 KAR 6:040. Education requirements and providers.

815 KAR 6:101. Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Long-term Care**

900 KAR 2:021. Repeal of 900 KAR 002:020.

900 KAR 2:040. Citations and violations; criteria and specific acts.

### **Food and Cosmetics**

902 KAR 45:005. Kentucky food code.

902 KAR 45:007. Repeal of 902 KAR 045:006 and 902 KAR 045:140.

902 KAR 45:090. Home-based processors and farmers market home-based microprocessors.

### **Department of Community Based Services: Division of Protection and Permanency: Child Welfare**

922 KAR 1:010. Independent non-relative adoptions.

922 KAR 1:100 & E. Public agency adoptions.

922 KAR 1:360 & E. Private child care placement, levels of care, and payment.

**The subcommittee adjourned at 2:50 p.m. The next meeting of the subcommittee is tentatively scheduled for December 11, 2018, at 1 p.m.**

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(10), 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 AGRICULTURE  
Meeting of November 14, 2018**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of November 14, 2018, having been referred to the Committee on November 6, 2018, pursuant to KRS 13A.290(6):

302 KAR 020:211. Repeal of 302 KAR 20:210.  
302 KAR 020:221. Repeal of 302 KAR 20:220.  
302 KAR 020:231. Repeal of 302 KAR 20:230.  
302 KAR 020:541. Repeal of 302 KAR 20:054.  
302 KAR 020:561. Repeal of 302 KAR 20:056.  
302 KAR 020:571. Repeal of 302 KAR 20:057.  
302 KAR 020:581. Repeal of 302 KAR 20:058.  
302 KAR 100:011. Repeal of 302 KAR 100:010.  
302 KAR 100:021. Repeal of 302 KAR 100:020.

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 November 14, 2018 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 November 19, 2018**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of November 19, 2018, having been referred to the Committee on November 6, 2018, pursuant to KRS 13A.290(6):

702 KAR 007:065

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached

to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 19, 2018 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

# CUMULATIVE SUPPLEMENT

## Locator Index - Effective Dates

F - 2

The Locator Index lists all administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky* from July 2018 through June 2019. 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 that may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 44 are those administrative regulations that were originally published in VOLUME 44 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2018 *Kentucky Administrative Regulations Service* was published.

## KRS Index

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The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 45 of the *Administrative Register of Kentucky*.

## Certifications Index

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The Certification Index lists of administrative regulations that have had certification letters filed during this VOLUME year. The certification process is established in KRS 13A.3104. If the certification letter states the administrative regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

## Technical Amendment Index

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2018 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because 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

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The Subject Index is a general index of administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.



## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date	Regulation Number	44 Ky.R. Page No.	Effective Date
<b>VOLUME 44</b>					
The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Regulations Service</i> was published.					
<b>SYMBOL KEY:</b>			103 KAR 41:120		
* Statement of Consideration not filed by deadline			Amended	1112	
** Withdrawn, not in effect within 1 year of publication			Withdrawn by agency		12-8-2017
*** Withdrawn before being printed in Register			201 KAR 3:005		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Repealed	2703	8-31-2018
IJC Interim Joint Committee			201 KAR 3:006(r)	2703	8-31-2018
(r) Repealer regulation: KRS 13A.310(3)-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.			201 KAR 3:025		
			Repealed	2703	8-31-2018
			201 KAR 3:035		
			Repealed	2703	8-31-2018
			201 KAR 3:045		
			Amended	2544	See 45 Ky.R.
			201 KAR 3:055		
			Repealed	2703	8-31-2018
			201 KAR 3:065		
			Repealed	2703	8-31-2018
			201 KAR 3:090		
			Amended	2546	8-24-2018
			201 KAR 3:100	2705	8-31-2018
			201 KAR 5:090		
			Amended	2548	See 45 Ky.R.
			201 KAR 5:130		
			Amended	2549	8-31-2018
			201 KAR 6:020		
			Amended	2552	8-31-2018
			201 KAR 6:050		
			Amended	2554	See 45 Ky.R.
			201 KAR 9:021		
			Amended	2361	7-18-2018
			201 KAR 9:031		
			Amended	2363	
			As Amended		See 45 Ky.R.
			201 KAR 9:310		
			Amended	1871	5-4-2018
			201 KAR 9:480	1725	
			As Amended	1970	3-15-2018
			201 KAR 12:010		
			Amended	2556	See 45 Ky.R.
			201 KAR 12:030		
			Amended	2557	See 45 Ky.R.
			201 KAR 12:082		
			Amended	2364	
			As Amended		See 45 Ky.R.
			201 KAR 12:140		
			Amended	2561	See 44 Ky.R.
			201 KAR 12:190		
			Amended	2563	See 44 Ky.R.
			201 KAR 12:230		
			Amended	2565	See 44 Ky.R.
			201 KAR 12:260		
			Amended	2368	
			As Amended		See 45 Ky.R.
			201 KAR 14:180		
			Amended	2566	8-24-2018
			201 KAR 20:056		
			Amended	2237	
			As Amended	2473	6-20-2018
			201 KAR 20:070		
			Amended	2239	
			As Amended	2475	6-20-2018
			201 KAR 20:110		
			Amended	2241	
			As Amended	2476	6-20-2018
			201 KAR 20:225		
			Amended	2244	
<hr/>					
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>					
13 KAR 3:060	2702	8-31-2018			
16 KAR 2:010					
Amended	1584				
Am Comments	2033	See 44 Ky.R.			
16 KAR 5:030					
Amended	1589				
Am Comments	2039	See 44 Ky.R.			
101 KAR 1:325					
Amended	2542	8-31-2018			
103 KAR 16:360					
Amended	1094				
Withdrawn by agency		12-8-2017			
103 KAR 26:120					
As Amended	1494	2-2-2018			

**LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>43 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>43 Ky.R. Page No.</b>	<b>Effective Date</b>
As Amended	2477	6-20-2018	Amended	2615	11-1-2018
201 KAR 20:370			401 KAR 5:055		
Amended	2246		Amended	2616	See 45 Ky.R.
As Amended	2478	6-20-2018	401 KAR 5:057		
201 KAR 20:411			Repealed	2707	11-1-2018
Amended	2247		401 KAR 5:060		
As Amended	2479	6-20-2018	Amended	2620	11-1-2018
201 KAR 20:470			401 KAR 5:065		
Amended	2250		Amended	2623	11-1-2018
As Amended	2481	6-20-2018	401 KAR 5:070		
201 KAR 22:020			Repealed	2707	11-1-2018
Amended	2255		401 KAR 5:075		
As Amended	2486	6-20-2018	Amended	2625	See 45 Ky.R.
201 KAR 22:040			401 KAR 5:080		
Amended	2257		Amended	2628	11-1-2018
As Amended	2487	6-20-2018	401 KAR 5:300		
201 KAR 22:070			Repealed	2707	11-1-2018
Amended	2259		401 KAR 5:320		
As Amended	2487	6-20-2018	Amended	2631	See 45 Ky.R.
201 KAR 25:090			401 KAR 51:240	2284	
Amended	1623		AmComments	2505	
Withdrawn by agency		10-26-2018	401 KAR 51:250	2286	
201 KAR 34:060			AmComments	2507	
Amended	2568	See 44 Ky.R.	401 KAR 51:260	2288	
201 KAR 41:100			AmComments	2509	
Amended	2572	See 44 Ky.R.	405 KAR 1:005		
301 KAR 1:130			Repealed	2708	10-5-2018
Amended	2574	8-6-2018	405 KAR 1:007		
301 KAR 2:049			Repealed	2708	10-5-2018
Amended	2260		405 KAR 1:010		
As Amended	2488	6-7-2018	Repealed	2708	10-5-2018
301 KAR 2:172			405 KAR 1:011(r)	2708	10-5-2018
Amended	2370		405 KAR 1:015		
As Amended		See 45 Ky.R.	Repealed	2708	10-5-2018
301 KAR 2:176			405 KAR 1:020		
Amended	2576	10-5-2018	Repealed	2708	10-5-2018
301 KAR 2:221			405 KAR 1:030		
Amended	2374		Repealed	2708	10-5-2018
As Amended		See 45 Ky.R.	405 KAR 1:040		
301 KAR 2:222			Repealed	2708	10-5-2018
Amended	2376		405 KAR 1:050		
As Amended		See 45 Ky.R.	Repealed	2708	10-5-2018
301 KAR 2:228			405 KAR 1:051		
Amended	2380	See 44 Ky.R.	Repealed	2708	10-5-2018
302 KAR 16:020			405 KAR 1:060		
Amended	2265		Repealed	2708	10-5-2018
As Amended	2492	7-6-2018	405 KAR 1:070		
302 KAR 16:081(r)	2283	7-6-2018	Repealed	2708	10-5-2018
302 KAR 16:091			405 KAR 1:080		
Amended	2267		Repealed	2708	10-5-2018
As Amended	2493	7-6-2018	405 KAR 1:090		
302 KAR 50:050	1768		Repealed	2708	10-5-2018
Amended	2383	7-24-2018	405 KAR 1:100		
401 KAR 5:002			Repealed	2708	10-5-2018
Amended	2578	See 45 Ky.R.	405 KAR 1:110		
401 KAR 5:005			Repealed	2708	10-5-2018
Amended	2585	See 45 Ky.R.	405 KAR 1:120		
401 KAR 5:006			Repealed	2708	10-5-2018
Amended	2598	See 45 Ky.R.	405 KAR 1:130		
401 KAR 5:015			Repealed	2708	10-5-2018
Amended	2602	See 45 Ky.R.	405 KAR 1:130		
401 KAR 5:039			Repealed	2708	10-5-2018
Repealed	2707	11-1-2018	405 KAR 1:141		
401 KAR 5:035			Repealed	2708	10-5-2018
Amended	2604	See 45 Ky.R.	405 KAR 1:150		
401 KAR 5:039(r)	2707	11-1-2018	Repealed	2708	10-5-2018
401 KAR 5:045			405 KAR 1:160		
Amended	2610	See 45 Ky.R.	Repealed	2708	10-5-2018
401 KAR 5:050			405 KAR 1:170		
Amended	2612	11-1-2018	Repealed	2708	10-5-2018
401 KAR 5:052			405 KAR 1:180		

**LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>43 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>43 Ky.R. Page No.</b>	<b>Effective Date</b>
Repealed	2708	10-5-2018	As Amended	2494	7-6-2018
405 KAR 1:190			501 KAR 16:290		
Repealed	2708	10-5-2018	Amended	1884	
405 KAR 1:200			Am Comments	2337	
Repealed	2708	10-5-2018	As Amended	2494	7-6-2018
405 KAR 1:210			501 KAR 16:300		
Repealed	2708	10-5-2018	Amended	1887	
405 KAR 1:220			Am Comments	2339	
Repealed	2708	10-5-2018	As Amended	2496	7-6-2018
405 KAR 1:230			501 KAR 16:310		
Repealed	2708	10-5-2018	Amended	1891	
405 KAR 1:240			Am Comments	2343	
Repealed	2708	10-5-2018	As Amended	2498	7-6-2018
405 KAR 1:250			501 KAR 16:330		
Repealed	2708	10-5-2018	Amended	1893	
405 KAR 1:260			Am Comments	2345	
Repealed	2708	10-5-2018	As Amended	2499	7-6-2018
405 KAR 3:005			501 KAR 16:340		
Repealed	2709	10-5-2018	Amended	1897	
405 KAR 3:007			Am Comments	2349	7-6-2018
Repealed	2709	10-5-2018	503 KAR 5:090		
405 KAR 3:010			Amended	2637	10-5-2018
Repealed	2709	10-5-2018	505 KAR 1:120		
405 KAR 3:011(r)	2709	10-5-2018	Amended	2384	
405 KAR 3:015			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	505 KAR 1:140		
405 KAR 3:020			Amended	2386	See 45 Ky.R.
Repealed	2709	10-5-2018	600 KAR 4:010		
405 KAR 3:030			Amended	2272	
Repealed	2709	10-5-2018	As Amended	2501	7-6-2018
405 KAR 3:040			601 KAR 2:030		
Repealed	2709	10-5-2018	Amended	1651	
405 KAR 3:050			Withdrawn by agency		6-13-2018
Repealed	2709	10-5-2018	603 KAR 2:015		
405 KAR 3:060			Amended	2640	
Repealed	2709	10-5-2018	Withdrawn by agency		7-24-2018
405 KAR 3:070			703 KAR 5:190		
Repealed	2709	10-5-2018	Repealed	2157	8-6-2018
405 KAR 3:080			703 KAR 5:191(r)	2157	8-6-2018
Repealed	2709	10-5-2018	703 KAR 5:225		
405 KAR 3:090			Amended	2101	
Repealed	2709	10-5-2018	As Amended		See 45 Ky.R.
405 KAR 3:100			703 KAR 5:260		
Repealed	2709	10-5-2018	Repealed	2157	6-17-2018
405 KAR 3:111			703 KAR 5:280	2158	
Repealed	2709	10-5-2018	Am Comments	2351	
405 KAR 3:120			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	704 KAR 7:090		
405 KAR 3:130			Amended	1658	
Repealed	2709	10-5-2018	As Amended	2015	4-6-2018
405 KAR 3:140			735 KAR 1:010		
Repealed	2709	10-5-2018	Amended	2388	
405 KAR 3:150			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	735 KAR 1:020		
405 KAR 3:160			Amended	2391	
Repealed	2709	10-5-2018	As Amended		See 45 Ky.R.
405 KAR 3:170			735 KAR 2:010		
Repealed	2709	10-5-2018	Amended	2394	
405 KAR 3:180			As Amended		See 45 Ky.R.
Repealed	2709	10-5-2018	735 KAR 2:020		
405 KAR 3:190			Amended	2396	
Repealed	2709	10-5-2018	As Amended		See 45 Ky.R.
501 KAR 6:030			735 KAR 2:030		
Amended	2269		Amended	2398	
AmComments	2511	8-6-2018	As Amended		See 45 Ky.R.
501 KAR 6:070			735 KAR 2:040		
Amended	2635	See 44 Ky.R.	Amended	2399	
501 KAR 6:170			As Amended		See 45 Ky.R.
Amended	2270	7-6-2018	735 KAR 2:050		
501 KAR 6:270			Amended	2401	
Amended	2097		As Amended		See 45 Ky.R.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
735 KAR 2:060			Amended	2695	See 44 Ky.R.
Amended	2403		902 KAR 10:040		
As Amended		See 45 Ky.R.	Amended	2277	See 44 Ky.R.
804 KAR 9:051(r)	1774		902 KAR 20:016		
807 KAR 5:022			Amended	1415	
Amended	2405	See 45 Ky.R.	Am Comments	2054	See 44 Ky.R.
807 KAR 5:026			902 KAR 20:058		
Amended	2436	See 45 Ky.R.	Amended	1714	5-4-2018
810 KAR 1:111(r)	2711		906 KAR 1:200		
Withdrawn		7-18-2018	Amended	2454	
810 KAR 8:040	2712		As Amended		See 45 Ky.R.
Withdrawn		7-18-2018	910 KAR 2:030		
811 KAR 1:241(r)	2717		Amended	2698	
Withdrawn		7-18-2018	As Amended		See 45 Ky.R.
811 KAR 2:151(r)	2718		910 KAR 2:050	2723	9-19-2018
Withdrawn		7-18-2018	910 KAR 2:052(r)	2723	9-19-2018
815 KAR 7:110			921 KAR 2:015		
Amended	2439	See 44 Ky.R.	Amended	1899	6-20-2018
815 KAR 7:120			922 KAR 2:090		
Amended	2442	8-22-2018	Amended	2109	
815 KAR 7:125			AmComments	2513	7-18-2018
Amended	2445	8-22-2018	922 KAR 2:100		
815 KAR 8:007			Amended	2118	
Repealed	2458	8-22-2018	AmComments	2522	7-18-2018
815 KAR 8:011(r)	2458	8-22-2018	922 KAR 2:110		
815 KAR 8:045			Repealed	2306	7-18-2018
Repealed	2458	8-22-2018	922 KAR 2:120		
815 KAR 8:070			Amended	2129	
Amended	2446	See 44 Ky.R.	AmComments	2533	
815 KAR 8:080			As Amended		See 45 Ky.R.
Amended	2449	See 44 Ky.R.	922 KAR 2:170		
815 KAR 8:100			Repealed	2308	7-18-2018
Amended	2451	See 44 Ky.R.	922 KAR 2:180		
820 KAR 1:001			Amended	2138	
Amended	2646	See 44 Ky.R.	As Amended		See 45 Ky.R.
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Amended	2690	See 44 Ky.R.			
820 KAR 1:125					
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820 KAR 1:130					
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820 KAR 1:135	2721	See 44 Ky.R.			
902 KAR 2:055					

## SYMBOL KEY:

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, not in effect within 1 year of publication
- \*\*\* Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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			907 KAR 1:560E	1493	11-1-2018
			907 KAR 1:563E	1497	11-1-2018
			907 KAR 1:642E	316	7-2-2018
			Withdrawn by agency	619	7-27-2018
9 KAR 1:015E	234	7-11-2018	921 KAR 2:055E	1501	11-1-2018
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9 KAR 1:030E	235	7-11-2018	921 KAR 3:070E	1507	11-1-2018
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31 KAR 3:010E	7	5-22-2018	922 KAR 1:360E		8-1-2018
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31 KAR 4:120E	239	6-21-2018			
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40 KAR 2:345E	241	7-2-2018			
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### SYMBOL KEY:

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, not in effect within 1 year of publication
- \*\*\* Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- IJC Interim Joint Committee
- (r)* Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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	400 KAR 4:130	151.182	400 KAR 1:001
	400 KAR 4:140		400 KAR 1:040
147A.310	103 KAR 15:195		400 KAR 1:090
149.344	400 KAR 1:001		400 KAR 1:100
	400 KAR 1:090	151.184	400 KAR 1:001
	400 KAR 1:100		400 KAR 1:040
149.346	400 KAR 1:001		400 KAR 1:090
	400 KAR 1:090		400 KAR 1:100
	400 KAR 1:100	151.297	400 KAR 1:001
149.348	400 KAR 1:001		400 KAR 1:040
	400 KAR 1:090		400 KAR 1:090
	400 KAR 1:100		400 KAR 1:100
150.010	301 KAR 1:201	151.990	400 KAR 1:001
	301 KAR 1:410		400 KAR 1:040
	301 KAR 2:132		400 KAR 1:090
	301 KAR 4:090		400 KAR 1:100
150.025	301 KAR 3:022	154.22-010	103 KAR 18:180
150.090	301 KAR 1:015		103 KAR 18:191
150.170	301 KAR 1:201	154.22-070	103 KAR 18:180
	301 KAR 1:410		103 KAR 18:191

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154.23-010	103 KAR 18:180	160.445	702 KAR 7:065
	103 KAR 18:191	160.380	016 KAR 2:100
154.23-055	103 KAR 18:180		016 KAR 9:040
	103 KAR 18:191	161.010	016 KAR 2:100
154.24-010	103 KAR 18:180	161.020	016 KAR 2:100
	103 KAR 18:191		016 KAR 2:210
154.24-110	103 KAR 18:180		016 KAR 9:040
	103 KAR 18:191	161.128	016 KAR 2:100
154.25-010	103 KAR 18:180		016 KAR 2:210
154.25-040	103 KAR 18:180		016 KAR 9:040
154.26-010	103 KAR 18:180	161.030	016 KAR 2:100
154.26-100	103 KAR 18:180		016 KAR 2:210
154.28-010	103 KAR 18:180		016 KAR 9:040
	103 KAR 18:191	161.046	016 KAR 9:040
154.28-110	103 KAR 18:180	161.048	016 KAR 9:040
	103 KAR 18:191	161.120	016 KAR 9:040
154.32-010	103 KAR 18:180	164.001	013 KAR 2:020
154.32-090	103 KAR 18:180	164.020	013 KAR 2:020
156.010	704 KAR 3:292	164.030	013 KAR 2:020
	704 KAR 3:365	164.518	011 KAR 4:080
156.035	704 KAR 3:292	164.744	011 KAR 4:080
	704 KAR 3:365		011 KAR 5:145
156.070	701 KAR 5:150	164.748	011 KAR 4:080
	702 KAR 7:065	164.753	011 KAR 4:080
	704 KAR 3:292		011 KAR 5:145
	704 KAR 3:303	164.769	011 KAR 4:080
	704 KAR 3:306	164.772	201 KAR 22:020
	704 KAR 8:010		201 KAR 22:040
	704 KAR 8:020		815 KAR 35:060
	704 KAR 8:030	164.780	011 KAR 4:080
	704 KAR 8:040	164.785	011 KAR 4:080
	704 KAR 8:050	164.6901 - 164.6935	200 KAR 30:011
156.108	701 KAR 5:140		830 KAR 2:001
156.160	013 KAR 2:020	164.6907	830 KAR 2:010
	701 KAR 5:140	164.6909	830 KAR 2:010
	704 KAR 3:303	164.6911	830 KAR 2:010
	704 KAR 3:305	164.6913 - 164.6933	830 KAR 2:020
	704 KAR 3:306	164.6915	830 KAR 2:010
	704 KAR 8:010	164.7535	011 KAR 4:080
	704 KAR 8:020		011 KAR 5:145
	704 KAR 8:030	164.7871 - 164.7885	011 KAR 15:010
	704 KAR 8:040		011 KAR 15:110
	704 KAR 8:050	164.7889	011 KAR 5:145
156.162	704 KAR 3:306	164.7890	011 KAR 4:080
156.850	704 KAR 8:010	164.7894	011 KAR 4:080
157.3175	704 KAR 3:015	165A	815 KAR 6:040
158.142	704 KAR 3:305	186.010	601 KAR 2:030
158.197	704 KAR 3:306	186.440	601 KAR 2:030
158.645	704 KAR 3:305	186.442	601 KAR 2:030
	704 KAR 8:010	186.480	601 KAR 2:030
158.6451	013 KAR 2:020	186.531	601 KAR 2:030
	704 KAR 3:303	186.560	601 KAR 2:030
	704 KAR 3:305	186.570	601 KAR 2:030
	704 KAR 3:306	186.655	603 KAR 5:070
	704 KAR 8:010	189.222	603 KAR 5:070
	704 KAR 8:020	189A.005	601 KAR 2:030
	704 KAR 8:030	189A.010	601 KAR 2:030
	704 KAR 8:040	189A.040	601 KAR 2:030
	704 KAR 8:050	189A.070	601 KAR 2:030
158.6453	013 KAR 2:020	189A.085	601 KAR 2:030
	704 KAR 3:303	189A.090	601 KAR 2:030
	704 KAR 8:020	189A.103	601 KAR 2:030
	704 KAR 8:030	189A.105	601 KAR 2:030
	704 KAR 8:040	189A.107	601 KAR 2:030
	704 KAR 8:050	189A.200	601 KAR 2:030
160.107	701 KAR 5:140	189A.240	601 KAR 2:030
160.290	704 KAR 3:303	189A.250	601 KAR 2:030
	704 KAR 3:306	189A.340	601 KAR 2:030
	704 KAR 8:010	189A.345	601 KAR 2:030
	704 KAR 8:020	189A.400	601 KAR 2:030
	704 KAR 8:030	189A.410	601 KAR 2:030
	704 KAR 8:040	189A.420	601 KAR 2:030
	704 KAR 8:050	189A.440	601 KAR 2:030
160.380	702 KAR 7:065	189A.500	601 KAR 2:030

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194A.005	902 KAR 100:022	198B.684	815 KAR 2:020
	902 KAR 100:070	198B.700	815 KAR 6:001
	902 KAR 100:142		815 KAR 6:010
194A.025	907 KAR 1:563	198B.706	815 KAR 6:001
194A.060	922 KAR 1:100		815 KAR 6:010
	922 KAR 1:560		815 KAR 6:030
196	501 KAR 6:020		815 KAR 6:040
197	501 KAR 6:020		815 KAR 6:101
198B.010	815 KAR 7:070	198B.712	815 KAR 6:010
198B.040	815 KAR 7:070		815 KAR 6:030
198B.050	815 KAR 7:070		815 KAR 6:040
	815 KAR 35:020	198B.714	815 KAR 6:010
198B.060	815 KAR 7:070	198B.716	815 KAR 6:010
	815 KAR 35:015	198B.722	815 KAR 6:010
198B.090	815 KAR 2:010		815 KAR 6:030
	815 KAR 2:020		815 KAR 6:040
	815 KAR 7:070	198B.724	815 KAR 6:010
	815 KAR 35:015		815 KAR 6:040
198B.095	815 KAR 2:010	198B.728	815 KAR 6:030
	815 KAR 2:020	198B.730	815 KAR 6:030
	815 KAR 7:070	198B.738	815 KAR 6:010
198B.260	902 KAR 20:260	199.011	922 KAR 1:010
198B.4003	815 KAR 4:030		922 KAR 1:100
198B.4009	815 KAR 2:010		922 KAR 1:360
	815 KAR 2:020		922 KAR 1:530
	815 KAR 4:030		922 KAR 1:560
	815 KAR 4:071	199.430	922 KAR 1:100
198B.4011	815 KAR 2:010	199.470	922 KAR 1:010
	815 KAR 4:030	199.473	922 KAR 1:010
198B.4013	815 KAR 2:010	199.480	922 KAR 1:010
	815 KAR 4:030		922 KAR 1:560
198B.4023	815 KAR 2:010	199.490	922 KAR 1:010
	815 KAR 2:020	199.492	922 KAR 1:010
	815 KAR 4:030	199.493	922 KAR 1:010
198B.4025	815 KAR 2:010	199.500	922 KAR 1:010
	815 KAR 2:020		922 KAR 1:060
	815 KAR 4:030	199.502	922 KAR 1:060
198B.4027	815 KAR 4:030	199.505	922 KAR 1:560
198B.4033	815 KAR 4:030	199.510	922 KAR 1:010
198B.4037	815 KAR 2:040	199.520	922 KAR 1:010
198B.615	815 KAR 2:040		922 KAR 1:100
198B.6405	815 KAR 2:010	199.525	922 KAR 1:100
198B.6409	815 KAR 2:010	199.540	922 KAR 1:010
	815 KAR 2:020	199.555	101 KAR 3:045
	815 KAR 22:011		922 KAR 1:050
	815 KAR 25:081		922 KAR 1:060
198B.645	815 KAR 2:010	199.557	922 KAR 1:060
198B.650	815 KAR 8:010	199.570	922 KAR 1:010
198B.654	815 KAR 2:010		922 KAR 1:100
	815 KAR 2:020	199.572	922 KAR 1:010
	815 KAR 8:010		922 KAR 1:100
	815 KAR 8:091	199.575	922 KAR 1:100
198B.656	815 KAR 8:010	199.590	922 KAR 1:010
	815 KAR 8:030	199.640 - 199.680	922 KAR 1:360
198B.658	815 KAR 2:010	199.801	922 KAR 1:360
	815 KAR 8:010	199.892	921 KAR 2:055
	815 KAR 8:030	199.8943	704 KAR 3:015
	815 KAR 8:091	199.990	922 KAR 1:010
198B.659	815 KAR 8:010		922 KAR 1:560
198B.6504	815 KAR 2:020	200.080 - 200.120	505 KAR 1:110
198B.660	815 KAR 2:010		505 KAR 1:180
	815 KAR 8:010	200.575	922 KAR 1:411
	815 KAR 8:030	202B.010	922 KAR 1:100
198B.662	815 KAR 8:030	205.175	907 KAR 1:075
198B.664	815 KAR 2:010	205.211	921 KAR 2:055
	815 KAR 2:020	205.231	907 KAR 1:075
	815 KAR 8:010		907 KAR 1:560
	815 KAR 8:030		907 KAR 1:563
198B.668	815 KAR 8:010		921 KAR 2:055
198B.670	815 KAR 2:030		921 KAR 3:060
198B.672	815 KAR 2:010		921 KAR 3:070
	815 KAR 8:010	205.237	907 KAR 1:075
198B.676	815 KAR 2:040		907 KAR 1:560
	815 KAR 8:010		907 KAR 1:563



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205.455	921 KAR 2:055	213.046	902 KAR 8:170
205.520	910 KAR 1:090	216.510 - 216.525	921 KAR 1:380
	895 KAR 1:001		900 KAR 2:040
	895 KAR 1:010		902 KAR 20:300
	895 KAR 1:015	216.530	902 KAR 20:008
	895 KAR 1:020	216.532	902 KAR 20:300
	895 KAR 1:025	216.535	902 KAR 20:300
	895 KAR 1:030	216.537 - 216.590	900 KAR 2:021
	895 KAR 1:035	216.540	902 KAR 20:300
	895 KAR 1:040	216.543	902 KAR 20:300
	895 KAR 1:045	216.545	902 KAR 20:300
	895 KAR 1:050	216.547	902 KAR 20:300
	895 KAR 1:055	216.555 - 216.567	900 KAR 2:040
	907 KAR 1:005	216.577	900 KAR 2:040
	907 KAR 1:121	216.785 - 216.793	902 KAR 20:300
	907 KAR 1:560	216.860	906 KAR 1:071
	907 KAR 1:563	216.865	906 KAR 1:071
205.531	907 KAR 8:040	216.900 - 216.915	906 KAR 1:071
205.560	907 KAR 1:560	216.930	906 KAR 1:071
205.622	907 KAR 1:121	216.2925	902 KAR 20:008
	895 KAR 1:035	216A.010	900 KAR 2:040
	907 KAR 8:040	216B.010	900 KAR 6:075
205.639	922 KAR 1:050		902 KAR 20:008
205.705	921 KAR 1:380	216B.010 - 216B.130	900 KAR 5:020
205.712	601 KAR 2:030	216B.010 - 216B.131	902 KAR 20:260
205.710 - 205.800	921 KAR 1:380	216B.010 - 216B.170	902 KAR 20:275
205.900 - 205.925	910 KAR 1:090	216B.015	900 KAR 6:075
205.992	921 KAR 1:380		902 KAR 20:008
205.2005	921 KAR 3:025	216B.020	902 KAR 20:008
205.6328	900 KAR 1:091		902 KAR 20:251
205.8451	895 KAR 1:001	216B.040	900 KAR 6:020
	907 KAR 1:563		902 KAR 20:008
209.030	902 KAR 20:300	216B.042	902 KAR 20:008
209.032	902 KAR 20:300	216B.045 - 216B.055	902 KAR 20:008
210.270	907 KAR 1:075	216B.075	902 KAR 20:008
	907 KAR 1:563	216B.090	900 KAR 6:075
210.366	201 KAR 26:175	216B.105 - 216B.131	902 KAR 20:008
211.025	902 KAR 10:051	216B.176	902 KAR 20:401
211.090	902 KAR 10:051	216B.177	902 KAR 20:401
	902 KAR 47:071	216B.185	902 KAR 20:008
211.180	902 KAR 8:165	216B.400	201 KAR 20:411
	902 KAR 8:170	216B.450	922 KAR 1:050
	902 KAR 10:051	216B.455	900 KAR 6:075
	902 KAR 47:071	216B.990	900 KAR 6:075
	902 KAR 100:022		902 KAR 20:008
	902 KAR 100:070		902 KAR 20:260
	902 KAR 100:100		902 KAR 20:275
	902 KAR 100:142	216C.010	900 KAR 11:010
211.350	815 KAR 35:015	216C.030	900 KAR 11:010
	815 KAR 35:020	216C.040	900 KAR 11:010
211.461	907 KAR 1:560	216C.050	900 KAR 11:010
211.466	907 KAR 1:560	216C.060	900 KAR 11:010
211.842 - 211.852	902 KAR 20:275	216C.070	900 KAR 11:010
	902 KAR 100:018	216C.080	900 KAR 11:010
	902 KAR 100:022	216C.090	900 KAR 11:010
	902 KAR 100:052	216C.100	900 KAR 11:010
	902 KAR 100:070	216C.110	900 KAR 11:010
	902 KAR 100:072	216C.120	900 KAR 11:010
	902 KAR 100:100	216C.160	900 KAR 11:010
	902 KAR 100:142	216C.170	900 KAR 11:010
211.990	902 KAR 100:018	216C.180	900 KAR 11:010
	902 KAR 100:022	216C.200	900 KAR 11:010
	902 KAR 100:052	216C.210	900 KAR 11:010
	902 KAR 100:070	216C.220	900 KAR 11:010
	902 KAR 100:072	216C.230	900 KAR 11:010
	902 KAR 100:100	217.005	902 KAR 45:007
	902 KAR 100:142	217.005 - 217.205	902 KAR 45:005
212.025	902 KAR 8:170		902 KAR 45:160
212.120	902 KAR 8:170	217.005 - 217.215	902 KAR 45:090
212.230	902 KAR 8:165	217.127	902 KAR 45:007
212.240	902 KAR 8:165	217.280 - 217.390	902 KAR 45:005
212.245	902 KAR 8:165	217.290 - 217.390	902 KAR 45:160
	902 KAR 8:170	217.801	902 KAR 47:071
212.890	902 KAR 8:165	217.290	902 KAR 45:090

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217.990 - 217.992	902 KAR 45:005		401 KAR 42:020
	902 KAR 45:160		401 KAR 42:060
217.992	902 KAR 45:090		401 KAR 42:341
217B	302 KAR 29:020	224.60-105	401 KAR 42:330
218A.205	201 KAR 20:056	224.60-110	401 KAR 42:250
	201 KAR 20:161	224.60-120	401 KAR 42:250
	201 KAR 20:215	224.60-130	401 KAR 42:250
	201 KAR 20:		401 KAR 42:330
218A.160	902 KAR 55:011	224.60-135	401 KAR 42:250
218A.172	201 KAR 9:260	224.60-140	401 KAR 42:250
	201 KAR 20:057		401 KAR 42:330
218A.175	902 KAR 20:260	224.60-150	401 KAR 42:250
218A.205	201 KAR 9:260		401 KAR 42:330
	201 KAR 20:057	224.70-100	401 KAR 5:002
	902 KAR 20:260	224.70-120	401 KAR 5:002
219.310 - 219.410	815 KAR 25:040	224.99	401 KAR 39:060
223	400 KAR 1:001		401 KAR 39:080
	400 KAR 1:040		401 KAR 39:090
	400 KAR 1:090		401 KAR 40:051
	400 KAR 1:100	224.99-010	401 KAR 5:002
224	400 KAR 1:001		401 KAR 40:051
	400 KAR 1:040	224.99-020	401 KAR 40:051
	400 KAR 1:090	224.99-030	401 KAR 40:051
	400 KAR 1:100	227.450	815 KAR 35:015
224.01-110	400 KAR 4:125	227.460	815 KAR 35:020
224.1	401 KAR 42:005	227.480	815 KAR 35:015
	401 KAR 42:020		815 KAR 35:020
	401 KAR 42:060	227.487	815 KAR 35:020
	401 KAR 42:341	227.489	815 KAR 35:015
224.1-010	401 KAR 5:002	227.491	815 KAR 35:015
224.1-070	401 KAR 5:002		815 KAR 35:020
224.1-400	401 KAR 5:002	227.492	815 KAR 35:015
	401 KAR 39:060	227.495	815 KAR 35:015
	401 KAR 42:060	227.550	815 KAR 25:050
224.1-405	401 KAR 42:250		815 KAR 25:060
224.10	401 KAR 42:250		815 KAR 25:090
	401 KAR 39:060		815 KAR 25:100
	401 KAR 39:080	227.550 - 227.660	815 KAR 25:020
	401 KAR 39:090	227.550 - 227.665	815 KAR 25:001
	401 KAR 40:051	227.555	815 KAR 25:050
	401 KAR 42:005	227.560	815 KAR 25:060
	401 KAR 42:020	227.570	815 KAR 2:010
	401 KAR 42:060		815 KAR 2:020
	401 KAR 42:341		815 KAR 25:050
224.10-100	401 KAR 52:050		815 KAR 25:060
	401 KAR 52:070		815 KAR 25:090
224.10-240	400 KAR 4:125	227.580	815 KAR 25:050
224.10-410	400 KAR 1:110		815 KAR 25:060
	401 KAR 42:250	227.590	815 KAR 2:010
224.10-420	401 KAR 42:250		815 KAR 2:020
224.10-430	401 KAR 42:250		815 KAR 25:040
224.10-440	401 KAR 42:250		815 KAR 25:050
	400 KAR 4:125		815 KAR 25:060
224.10-470	401 KAR 42:250		815 KAR 25:090
	400 KAR 4:125	227.600	815 KAR 25:050
224.20-100	401 KAR 52:050		815 KAR 25:060
	401 KAR 52:070	227.610	815 KAR 25:060
224.20-110	401 KAR 52:050	227.620	815 KAR 25:060
	401 KAR 52:070	227.630	815 KAR 25:060
224.20-120	401 KAR 52:050	227.640	815 KAR 25:100
	401 KAR 52:070	227.660	815 KAR 25:090
224.40	401 KAR 42:060	227.990	815 KAR 25:050
	401 KAR 42:341		815 KAR 25:060
224.40-310	401 KAR 39:060		815 KAR 25:090
224.43	401 KAR 42:060	227.992	815 KAR 25:050
	401 KAR 42:341	227A.010	815 KAR 35:060
224.46	401 KAR 39:060	227A.020	815 KAR 2:030
	401 KAR 39:080	227A.040	815 KAR 2:010
	401 KAR 39:090		815 KAR 2:020
	401 KAR 40:051		815 KAR 35:080
	401 KAR 42:060		815 KAR 35:090
	401 KAR 42:341		815 KAR 35:101
224.50-130	401 KAR 39:090	227A.060	815 KAR 35:060
224.60	401 KAR 42:005		815 KAR 35:080

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227A.100	815 KAR 35:090		810 KAR 2:050
	815 KAR 2:010		810 KAR 2:060
	815 KAR 2:020		810 KAR 2:070
	815 KAR 35:060		810 KAR 2:080
227A.110	815 KAR 35:080		810 KAR 3:010
230.210	810 KAR 6:020		810 KAR 3:020
230.215	810 KAR 8:050		810 KAR 3:030
	810 KAR 2:001		810 KAR 3:040
	810 KAR 2:020		810 KAR 4:020
	810 KAR 2:030		810 KAR 4:040
	810 KAR 2:040		810 KAR 4:050
	810 KAR 2:050		810 KAR 4:060
	810 KAR 2:060		810 KAR 4:070
	810 KAR 2:070		810 KAR 4:090
	810 KAR 2:080		810 KAR 4:100
	810 KAR 3:010		810 KAR 5:010
	810 KAR 3:020		810 KAR 5:020
	810 KAR 4:010		810 KAR 5:030
	810 KAR 4:020		810 KAR 5:050
	810 KAR 4:030		810 KAR 5:060
	810 KAR 4:040		810 KAR 5:070
	810 KAR 4:050		810 KAR 5:080
	810 KAR 4:060	230.265	810 KAR 6:020
	810 KAR 4:070		810 KAR 7:040
	810 KAR 4:080		810 KAR 8:010
	810 KAR 4:090		810 KAR 8:020
	810 KAR 4:100		810 KAR 8:030
	810 KAR 5:010		810 KAR 8:040
	810 KAR 5:020		810 KAR 8:050
	810 KAR 5:030		810 KAR 8:060
	810 KAR 4:040	230.280	810 KAR 8:010
	810 KAR 5:050		810 KAR 8:020
	810 KAR 5:060		810 KAR 8:030
	810 KAR 5:070		810 KAR 8:060
	810 KAR 5:080		810 KAR 3:010
	810 KAR 6:020		810 KAR 3:020
	810 KAR 7:020		810 KAR 5:070
	810 KAR 7:030		810 KAR 5:080
	810 KAR 7:040	230.290	810 KAR 2:030
	810 KAR 7:060		810 KAR 2:050
	810 KAR 7:070		810 KAR 3:010
	810 KAR 8:010		810 KAR 3:020
	810 KAR 8:020		810 KAR 3:030
	810 KAR 8:030		810 KAR 3:040
	810 KAR 8:040		810 KAR 4:030
	810 KAR 8:050		810 KAR 4:090
	810 KAR 8:060		810 KAR 4:100
	810 KAR 9:010		810 KAR 5:070
	810 KAR 7:010		810 KAR 5:080
230.218	810 KAR 1:301		810 KAR 8:010
230.225	810 KAR 3:030		810 KAR 8:020
	810 KAR 7:030		810 KAR 8:030
	810 KAR 7:060		810 KAR 8:040
	810 KAR 7:070		810 KAR 8:050
	810 KAR 8:010		810 KAR 8:060
	810 KAR 8:020		810 KAR 3:010
	810 KAR 8:040		810 KAR 3:020
	811 KAR 1:301	230.300	810 KAR 3:030
	811 KAR 2:301		810 KAR 5:070
	810 KAR 2:010		810 KAR 8:030
	810 KAR 2:010		810 KAR 8:040
230.230	810 KAR 2:020	230.310	810 KAR 2:030
230.240	810 KAR 2:050		810 KAR 2:050
	810 KAR 4:030		810 KAR 3:020
	810 KAR 8:010		810 KAR 3:030
	810 KAR 8:020		810 KAR 3:040
	810 KAR 8:040		810 KAR 4:030
	810 KAR 8:050		810 KAR 4:090
	810 KAR 8:060		810 KAR 4:100
230.445	810 KAR 7:060		810 KAR 5:040
	810 KAR 7:070		810 KAR 5:070
	810 KAR 2:001		810 KAR 5:080
	810 KAR 2:020		810 KAR 8:030
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	810 KAR 3:010		012 KAR 2:016
	810 KAR 3:020		012 KAR 2:017
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	810 KAR 3:040		012 KAR 2:021
	810 KAR 4:030		012 KAR 2:026
	810 KAR 4:090		012 KAR 2:036
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	810 KAR 8:010	250.501	012 KAR 2:031
	810 KAR 8:020		012 KAR 2:041
	810 KAR 8:030		012 KAR 2:046
	810 KAR 8:040		012 KAR 2:051
	810 KAR 8:050		012 KAR 2:061
	810 KAR 8:060		012 KAR 3:012
230.330	810 KAR 9:010		012 KAR 3:017
	810 KAR 7:020		012 KAR 3:022
	810 KAR 7:070		012 KAR 3:027
230.361	810 KAR 9:010		012 KAR 3:028
	810 KAR 3:030		012 KAR 3:037
	810 KAR 4:080		012 KAR 3:039
	810 KAR 6:020		012 KAR 3:042
	810 KAR 8:030	250.511	012 KAR 2:041
230.3615	810 KAR 6:020		012 KAR 2:051
230.370	810 KAR 3:030		012 KAR 2:061
	810 KAR 8:010		012 KAR 3:037
	810 KAR 8:020	250.521	012 KAR 2:061
	810 KAR 8:040		012 KAR 3:012
230.377	810 KAR 3:050		012 KAR 3:017
230.380	810 KAR 3:030		012 KAR 3:022
	810 KAR 3:050		012 KAR 3:027
230.400	810 KAR 7:030		012 KAR 3:028
	810 KAR 7:070		012 KAR 3:039
230.443	810 KAR 7:060		012 KAR 3:042
230.770	810 KAR 7:040	250.531	012 KAR 2:031
	810 KAR 7:070		012 KAR 3:017
230.800	810 KAR 7:020	250.541	012 KAR 2:041
	810 KAR 7:070		012 KAR 2:051
230.802	810 KAR 7:040		012 KAR 2:046
	810 KAR 7:070		012 KAR 2:066
230.804	810 KAR 7:070		012 KAR 3:037
230.990	810 KAR 6:020	250.551	012 KAR 2:031
	810 KAR 7:040		012 KAR 2:046
230.398	810 KAR 5:080		012 KAR 2:051
235.010	301 KAR 1:015	250.561	012 KAR 2:061
235.990	301 KAR 1:015	250.581	012 KAR 2:051
236.097	815 KAR 15:080	257	302 KAR 20:211
236.210	815 KAR 15:080		302 KAR 20:231
241.010	804 KAR 5:080		302 KAR 20:541
241.060	804 KAR 11:031		302 KAR 20:581
243.020	804 KAR 8:050	257.020	302 KAR 20:561
243.0307	804 KAR 1:110		302 KAR 20:571
243.036	804 KAR 1:110	257.030	302 KAR 20:561
243.130	804 KAR 1:070		302 KAR 20:571
243.150	804 KAR 1:070	257.040	302 KAR 20:571
243.170	804 KAR 1:070	257.050	302 KAR 20:221
243.180	804 KAR 1:070		302 KAR 20:571
243.232	804 KAR 5:080	257.080	302 KAR 20:221
243.260	804 KAR 1:110	257.110	302 KAR 20:561
243.340	804 KAR 1:070	257.120	302 KAR 20:561
243.390	804 KAR 4:011	257.110 - 257.170	302 KAR 20:221
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	804 KAR 5:021		302 KAR 100:021
244.590	804 KAR 1:070	262.904	302 KAR 100:011
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244.600	804 KAR 5:021	262.908	302 KAR 100:011
246.210	302 KAR 20:221		302 KAR 100:021
247	302 KAR 1:011	304.1-050	806 KAR 9:360
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304.3	806 KAR 2:121	304.17A-577	806 KAR 17:300
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304.5-150	806 KAR 5:011	304.17A-728	806 KAR 17:300
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304.14-120	806 KAR 17:020	304.32-153	806 KAR 17:091
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304.17A.155	806 KAR 17:091	314.031	201 KAR 20:161
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304.17A.230	806 KAR 17:091		201 KAR 20:260
304.17A.243	806 KAR 17:091		201 KAR 20:320
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304.17A.258	806 KAR 17:091		201 KAR 20:062
304.17A-500	806 KAR 17:300		201 KAR 20:240
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	201 KAR 20:240	318.080	815 KAR 20:030
314.075	201 KAR 20:240	318.100	815 KAR 2:030
314.091	201 KAR 20:056	318.130	815 KAR 2:010
	201 KAR 20:161		815 KAR 2:020
	201 KAR 20:162		902 KAR 45:160
314.101	201 KAR 20:240	318.134	815 KAR 2:040
314.103	201 KAR 20:056	318.170	815 KAR 2:030
	201 KAR 20:411		815 KAR 20:041
314.105	201 KAR 20:226	319.005	201 KAR 26:130
314.107	201 KAR 20:161	319.032	201 KAR 26:130
314.109	201 KAR 20:056		201 KAR 26:171
314.111	201 KAR 20:056		201 KAR 26:175
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	201 KAR 20:320	319.053	201 KAR 26:175
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314.131	201 KAR 20:062		201 KAR 26:211
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314.142	201 KAR 20:240		201 KAR 26:171
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314.181	201 KAR 20:226	319A.080	201 KAR 28:060
314.193	201 KAR 20:057		201 KAR 28:170
314.195	201 KAR 20:057	319A.100	201 KAR 28:060
314.196	201 KAR 20:057	319A.110	201 KAR 28:060
314.470	201 KAR 20:161	319A.120	201 KAR 28:060
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314.475	201 KAR 20:056	319A.150	201 KAR 28:060
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315.010	201 KAR 2:370	322A	401 KAR 42:341
315.020	201 KAR 2:370	327.010	201 KAR 22:020
315.030	201 KAR 2:370	327.050	201 KAR 22:020
315.036	902 KAR 55:011		201 KAR 22:040
315.065	201 KAR 2:015	327.060	201 KAR 22:020
315.120	201 KAR 2:015	327.070	201 KAR 22:040
315.121	201 KAR 2:370	327.075	201 KAR 22:020
315.191	902 KAR 55:011	327.080	201 KAR 22:020
315.402	902 KAR 55:011	327.300	201 KAR 22:170
315.406	902 KAR 55:011	327.310	201 KAR 22:020
317A.020	201 KAR 12:030	335.030	201 KAR 23:150
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317A.050	201 KAR 12:030	335.155	201 KAR 23:150
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317A.060	201 KAR 12:030	335.310	201 KAR 32:110
	201 KAR 12:251	335.320	201 KAR 32:110
317A.062	201 KAR 12:260	335.325	201 KAR 32:110
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317A.130	201 KAR 12:280	335.399	201 KAR 32:110
318.010	815 KAR 20:030	338	803 KAR 50:010
318.020	815 KAR 20:030	339.230	815 KAR 35:060
318.030	815 KAR 20:030	341.190	787 KAR 1:010
318.040	815 KAR 20:030	342.0011	803 KAR 25:089
318.050	815 KAR 2:040		803 KAR 30:010
	815 KAR 20:030	342.019	803 KAR 25:089
318.054	815 KAR 2:010	342.020	803 KAR 25:089
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342.1222	803 KAR 30:010	353.510	805 KAR 1:210
342.1223	803 KAR 30:010	353.590	400 KAR 1:001
342.1231	803 KAR 30:010		400 KAR 1:040
	803 KAR 30:021		400 KAR 1:090
342.340	803 KAR 30:010	353.620	400 KAR 1:001
342.650	803 KAR 30:010		400 KAR 1:040
350.010	400 KAR 1:110		400 KAR 1:090
350.028	400 KAR 1:001	353.630	400 KAR 1:001
	400 KAR 1:040		400 KAR 1:040
	400 KAR 1:090		400 KAR 1:090
	400 KAR 1:110		805 KAR 1:210
350.029	400 KAR 1:090	353.640	400 KAR 1:001
350.032	400 KAR 1:001		400 KAR 1:040
	400 KAR 1:090		400 KAR 1:090
350.060	400 KAR 1:090		805 KAR 1:210
350.070	400 KAR 1:001	353.700	400 KAR 1:001
	400 KAR 1:040		400 KAR 1:040
	400 KAR 1:090		400 KAR 1:090
	400 KAR 1:110	353.5901	400 KAR 1:001
350.085	400 KAR 1:001		400 KAR 1:040
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	400 KAR 1:090	367.680	040 KAR 2:345
350.090	400 KAR 1:001	367.686	040 KAR 2:345
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350.093	400 KAR 1:001	367.690	040 KAR 2:345
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350.130	400 KAR 1:001		418 KAR 1:050
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	400 KAR 1:110	405.430	921 KAR 1:380
350.240	400 KAR 1:090	405.467	921 KAR 1:380
350.255	400 KAR 1:001	405.520	921 KAR 1:380
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350.300	400 KAR 1:090	407.5101 - 407.5903	921 KAR 1:380
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350.610	400 KAR 1:001	446.010	418 KAR 1:010
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350.990	400 KAR 1:001		505 KAR 1:180
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350.0301	400 KAR 1:001		922 KAR 1:530
	400 KAR 1:090	605.090	922 KAR 1:100
	400 KAR 1:110		922 KAR 1:360
350.0305	400 KAR 1:001	605.100	922 KAR 1:530
	400 KAR 1:090	605.130	922 KAR 1:530
351.070	805 KAR 3:100	610.110	922 KAR 1:360
351.315	400 KAR 1:001	610.170	921 KAR 1:380
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351.345	400 KAR 1:001	620.020	922 KAR 1:560
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	400 KAR 1:090	620.360	922 KAR 1:100
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351.350	400 KAR 1:001		922 KAR 1:050
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353	400 KAR 1:100	625.065	922 KAR 1:560
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	902 KAR 100:022		012 KAR 3:028
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23 C.F.R. 24 C.F.R. 29 C.F.R.	012 KAR 3:037	21 U.S.C.	012 KAR 3:037
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	815 KAR 25:090		603 KAR 5:070
	806 KAR 17:091		922 KAR 1:100
	815 KAR 35:060		101 KAR 2:095
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30 C.F.R.	400 KAR 1:090	29 U.S.C.	806 KAR 17:091
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	400 KAR 1:090		400 KAR 1:001
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34 C.F.R. 39 C.F.R. 40 C.F.R.	401 KAR 39:060	30 U.S.C.	400 KAR 1:090
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42 C.F.R.	401 KAR 52:070	31 U.S.C. 33 U.S.C.	401 KAR 42:005
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	907 KAR 8:040		895 KAR 1:040
	806 KAR 9:360		895 KAR 1:045
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	902 KAR 20:260		900 KAR 2:040
49 C.F.R. 50 C.F.R. 74 C.F.R. 7 U.S.C.	902 KAR 20:275		902 KAR 20:260
	902 KAR 100:072		902 KAR 20:275
	907 KAR 8:040		902 KAR 100:022
	921 KAR 1:380		902 KAR 100:052
	921 KAR 2:055		902 KAR 100:070
	921 KAR 3:025		902 KAR 100:072
	922 KAR 1:060		902 KAR 100:100
	922 KAR 1:100		902 KAR 100:142
	922 KAR 1:530		906 KAR 1:190
	902 KAR 100:070		907 KAR 1:005
	400 KAR 3:020		907 KAR 1:560
	806 KAR 17:570		907 KAR 1:563
	302 KAR 29:020		907 KAR 8:040
	302 KAR 50:080		921 KAR 1:380

**KRS SECTION****REGULATION****KRS SECTION****REGULATION**

	921 KAR 2:055
	921 KAR 3:030
	921 KAR 3:035
	922 KAR 1:060
	922 KAR 1:100
	922 KAR 1:360
	922 KAR 1:530
45 U.S.C.	921 KAR 2:055
49 U.S.C.	302 KAR 29:020
	603 KAR 5:070
50 U.S.C.	103 KAR 17:130
52 U.S.C.	921 KAR 3:030
2012 Ky Acts ch. 144, Part XII	806 KAR 17:091
Pres. EO 13166	921 KAR 3:030
Pub. L 108-173	806 KAR 17:570
Pub. L 114-94	603 KAR 5:070

## CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

\* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	First Effective Date	Previous Last Effective Date*	Letter Filed Date	Action
011 KAR 003:001	03-04-1993	01-10-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:005	12-09-1992	09-12-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:045	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:055	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:100	08-20-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 003:001	03-04-1993	01-10-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:005	12-09-1992	09-12-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:045	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:055	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:100	08-20-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 004:020	02-04-1976	09-13-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:030	11-01-1978	04-14-1997	09-28-2018	Remain in Effect without Amendment
011 KAR 004:040	10-09-1984	11-08-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:050	05-14-1985	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 004:060	10-01-1992	10-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 005:001	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:033	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:110	11-04-1988	08-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 005:130	03-23-1989	10-06-2006	09-28-2018	Remain in Effect without Amendment
011 KAR 005:140	02-03-1989	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 005:145	08-01-1992	07-01-2016	09-28-2018	Remain in Effect without Amendment
011 KAR 005:150	02-03-1989	09-09-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 005:160	02-03-1989	03-11-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 005:170	02-03-1989	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:180	02-03-1989	06-03-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 005:200	04-06-2007	07-13-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 007:010	03-04-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 007:020	08-12-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 008:010	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:020	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:030	08-09-1990	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 008:040	08-09-1990	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 010:010	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 010:020	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 012:010	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:020	08-02-1991	10-11-1999	09-28-2018	Remain in Effect without Amendment
011 KAR 012:030	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:040	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:050	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:060	08-02-1991	07-12-2010	09-28-2018	Remain in Effect without Amendment
011 KAR 012:070	08-02-1991	08-14-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 012:090	08-02-1991	10-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 013:010	03-06-1997	03-06-1997	09-28-2018	Remain in Effect without Amendment

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011 KAR 014:010	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:020	10-01-1998	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 014:030	10-01-1998	03-10-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 014:040	10-01-1998	08-15-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:050	10-01-1998	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 014:060	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 014:070	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:080	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 015:010	10-01-1998	07-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:020	10-01-1998	01-28-2014	09-28-2018	Remain in Effect without Amendment
011 KAR 015:030	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:040	10-01-1998	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 015:050	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:060	10-01-1998	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:070	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:080	09-09-2002	09-09-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 015:090	03-01-1999	03-09-2018	09-28-2018	Remain in Effect without Amendment
011 KAR 015:100	10-12-2015	10-12-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 016:001	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:010	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:020	02-05-2001	02-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 016:030	02-05-2001	02-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 016:040	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:050	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:060	02-05-2001	10-12-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 016:070	07-06-2007	07-06-2007	09-28-2018	Remain in Effect without Amendment
011 KAR 017:010	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:040	12-01-2003	01-04-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 017:050	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:060	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:070	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:080	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:090	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:100	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:110	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 019:010	04-01-2011	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 019:020	04-01-2011	04-01-2011	09-28-2018	Remain in Effect without Amendment
011 KAR 019:030	04-01-2011	04-01-2011	09-28-2018	Remain in Effect without Amendment
011 KAR 020:001	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:010	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:020	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:030	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:040	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:050	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:060	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:070	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
103 KAR 017:120	01-05-2007	01-05-2007	11-06-2018	Remain in Effect without Amendment
103 KAR 018:010	02-05-1975	02-05-1975	11-06-2018	Remain in Effect without Amendment
103 KAR 018:060	02-05-1975	02-05-1975	11-06-2018	Remain in Effect without Amendment
103 KAR 018:172	01-05-2007	01-05-2007	11-06-2018	Remain in Effect without Amendment
201 KAR 009:021	10-09-1984	02-14-2008	03-29-2018	To be Amended. Amendment filed 4-12-18

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201 KAR 009:031	10-09-1984	05-05-2006	03-29-2018	To be Amended. Amendment filed 4-12-18
201 KAR 009:041	10-09-1984	11-15-2006	09-28-2018	Remain in Effect without Amendment
201 KAR 009:051	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:061	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:071	10-09-1984	10-09-1984	07-07-2018	Remain in Effect without Amendment
201 KAR 009:084	11-11-1986	02-02-2007	09-28-2018	Remain in Effect without Amendment
201 KAR 009:400	02-02-2007	02-02-2007	09-28-2018	Remain in Effect without Amendment
201 KAR 022:001	01-04-2005	06-06-2014	06-04-2018	Remain in Effect without Amendment
201 KAR 022:010	09-10-1975	12-02-1986	06-04-2018	Remain in Effect without Amendment
201 KAR 022:035	11-06-1980	05-31-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:045	01-04-2005	10-19-2016	06-04-2018	Remain in Effect without Amendment
201 KAR 022:052	06-03-1981	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:053	08-17-1990	06-02-2017	06-04-2018	Remain in Effect without Amendment
201 KAR 022:130	01-06-1983	09-18-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:135	07-02-1987	07-21-2010	06-04-2018	Remain in Effect without Amendment
201 KAR 022:140	07-02-1987	11-15-2006	06-04-2018	Remain in Effect without Amendment
201 KAR 022:150	12-19-2001	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:160	08-01-2014	08-01-2014	06-04-2018	Remain in Effect without Amendment
400 KAR 001:060	05-14-1987	05-14-1987	08-06-2018	Remain in Effect without Amendment
400 KAR 001:120	02-22-1995	08-04-2017	08-06-2018	Remain in Effect without Amendment
401 KAR 004:010	02-05-1975	08-25-2005	07-30-2018	Remain in Effect without Amendment
401 KAR 004:020	07-06-1977	07-06-1977	07-30-2018	Remain in Effect without Amendment
401 KAR 004:030	06-11-1975	06-11-1975	07-30-2018	Remain in Effect without Amendment
401 KAR 004:040	06-11-1975	06-11-1975	07-30-2018	Remain in Effect without Amendment
401 KAR 004:050	11-06-1980	11-06-1980	07-30-2018	Remain in Effect without Amendment
401 KAR 004:060	10-02-1987	03-09-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 004:070	05-05-2017	05-05-2017	07-30-2018	Remain in Effect without Amendment
401 KAR 004:200	08-07-1984	08-07-1984	07-30-2018	Remain in Effect without Amendment
401 KAR 004:220	06-26-1991	06-26-1991	07-30-2018	Remain in Effect without Amendment
401 KAR 004:300	04-28-1993	04-28-1993	07-30-2018	Remain in Effect without Amendment
401 KAR 006:001	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:200	08-07-1984	08-07-1984	09-05-2018	Remain in Effect without Amendment
401 KAR 006:310	08-13-1985	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:302	11-15-1990	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:350	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 008:010	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:020	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:022	03-18-2002	09-25-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:030	11-15-1990	02-05-2010	10-03-2018	Remain in Effect without Amendment
401 KAR 008:040	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:050	11-15-1990	07-06-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:075	04-09-2001	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:100	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:150	11-15-1990	08-05-2010	10-03-2018	Remain in Effect without Amendment
401 KAR 008:200	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:250	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:300	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:700	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 009:010	08-21-2008	08-21-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 009:020	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 011:001	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:010	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:020	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment



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401 KAR 011:030	03-06-2009	08-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:040	02-05-2010	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:050	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:060	03-06-2009	03-06-2009	11-01-2018	Remain in Effect without Amendment
401 KAR 030:005	03-12-1997	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:020	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:031	06-24-1992	03-12-1997	09-05-2018	Remain in Effect without Amendment
401 KAR 030:040	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 039:005	03-12-1997	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:060	12-02-1983	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:080	02-04-1986	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:090	03-10-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:120	10-26-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 040:001	03-12-1997	03-12-1997	10-09-2018	Remain in Effect without Amendment
401 KAR 040:010	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:020	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:040	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:060	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 042:005	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:011	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:020	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:030	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:040	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:045	12-19-1990	02-05-2016	10-09-2018	Remain in Effect without Amendment
401 KAR 042:050	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:060	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:070	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:080	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:090	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:095	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:200	09-25-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:250	09-13-2006	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:290	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:300	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:316	05-19-1999	10-06-2011	10-06-2011	Remain in Effect without Amendment
401 KAR 042:320	03-12-1993	10-06-2011	10-06-2011	Remain in Effect without Amendment
401 KAR 042:330	07-09-1997	10-06-2011	10-06-2011	Remain in Effect without Amendment
401 KAR 042:335	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:340	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 045:010	06-24-1992	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:020	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:025	04-28-1993	04-28-1993	09-05-2018	Remain in Effect without Amendment
401 KAR 045:030	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:040	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:050	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:060	06-24-1992	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:070	06-24-1992	05-05-2006	09-05-2018	Remain in Effect without Amendment
401 KAR 045:080	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:090	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:100	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:110	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:130	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:135	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:140	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment

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401 KAR 045:160	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:210	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:250	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 046:101	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 046:110	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 046:120	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 047:005	03-12-1997	03-12-1997	10-09-2018	Remain in Effect without Amendment
401 KAR 047:025	04-28-1993	04-28-1993	10-09-2018	Remain in Effect without Amendment
401 KAR 047:030	05-08-1990	03-18-2004	10-09-2018	Remain in Effect without Amendment
401 KAR 047:070	02-01-1982	05-08-1990	05-08-1990	Remain in Effect without Amendment
401 KAR 047:080	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:090	05-08-1990	08-05-2010	10-09-2018	Remain in Effect without Amendment
401 KAR 047:095	03-19-2003	03-19-2003	10-09-2018	Remain in Effect without Amendment
401 KAR 047:100	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:110	09-08-1999	09-08-1999	10-09-2018	Remain in Effect without Amendment
401 KAR 047:120	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:130	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:136	03-13-1991	03-13-1991	10-09-2018	Remain in Effect without Amendment
401 KAR 047:140	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:150	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:160	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:170	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:180	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:190	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:205	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 047:207	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 048:005	11-07-1994	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:050	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:060	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:070	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:080	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:090	05-08-1990	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:170	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:200	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:205	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:206	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:207	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:208	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:300	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:310	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:320	09-08-1999	09-08-1999	08-13-2018	Remain in Effect without Amendment
401 KAR 049:005	03-12-1997	03-12-1997	09-05-2018	Remain in Effect without Amendment
401 KAR 049:011	09-23-1992	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:080	01-21-2005	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:100	03-12-1993	03-12-1993	09-05-2018	Remain in Effect without Amendment
401 KAR 051:001	06-24-1992	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:005	06-06-1979	06-06-1979	07-30-2018	Remain in Effect without Amendment
401 KAR 051:017	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:052	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:150	02-03-2006	02-03-2006	07-30-2018	Remain in Effect without Amendment
401 KAR 051:160	08-15-2001	02-03-2006	07-30-2018	Remain in Effect without Amendment
401 KAR 051:170	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:180	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment

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401 KAR 051:190	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:195	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:210	02-02-2007	02-02-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 051:220	02-02-2007	06-13-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 051:230	02-02-2007	02-02-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 052:001	01-15-2001	01-03-2011	09-12-2018	Remain in Effect without Amendment
401 KAR 052:020	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:030	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:040	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:060	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:090	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:100	01-15-2001	01-15-2001	09-12-2018	To be amended, file deadline 03-12-20
401 KAR 053:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 053:010	06-06-1979	07-19-2016	09-12-2018	Remain in Effect without Amendment
401 KAR 055:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:010	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:015	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 055:020	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 057:002	07-14-1999	11-14-2007	09-12-2018	Remain in Effect without Amendment
401 KAR 058:005	01-25-1989	07-07-1998	07-30-2018	To be amended, file deadline 01-03-20
401 KAR 058:010	01-25-1989	01-25-1989	07-30-2018	Remain in Effect without Amendment
401 KAR 058:025	01-07-1985	11-14-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 058:040	11-06-1987	11-06-1987	07-30-2018	Remain in Effect without Amendment
400 KAR 004:100	01-05-1977	10-26-1988	11-06-2018	Remain in Effect without Amendment
401 KAR 063:001	06-24-1992	11-08-2006	11-08-2006	Remain in Effect without Amendment
401 KAR 063:005	06-06-1979	07-13-2005	09-12-2018	Remain in Effect without Amendment
401 KAR 063:010	06-29-1979	06-29-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:015	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:020	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:021	11-11-1986	01-19-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 063:025	06-06-1979	06-24-1992	09-12-2018	Remain in Effect without Amendment
401 KAR 063:031	08-24-1982	02-08-1993	09-12-2018	Remain in Effect without Amendment
401 KAR 063:060	11-29-1993	03-03-2017	09-12-2018	Remain in Effect without Amendment
401 KAR 065:001	11-29-1993	11-08-2006	09-12-2018	Remain in Effect without Amendment
401 KAR 065:005	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 068:010	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:020	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:048	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:065	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:090	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:100	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:150	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:200	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 100:030	03-18-2004	03-18-2004	03-18-2004	Remain in Effect without Amendment
401 KAR 101:001	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:010	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:020	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:030	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:040	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 102:005	02-03-2014	02-03-2014	08-13-2018	Remain in Effect without Amendment
401 KAR 102:010	01-14-2002	02-03-2014	08-13-2018	Remain in Effect without Amendment
401 KAR 102:020	02-03-2014	02-03-2014	08-13-2018	Remain in Effect without Amendment
402 KAR 003:010	11-13-1984	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:020	05-19-1999	05-05-2006	07-03-2018	Remain in Effect without Amendment

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402 KAR 003:030	05-19-1999	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:040	05-05-2006	05-05-2006	07-03-2018	Remain in Effect without Amendment
402 KAR 003:050	09-03-2015	09-03-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 002:010	08-11-1982	08-11-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 005:002	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:015	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:021	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:032	08-26-2004	03-08-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 005:036	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:040	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:042	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:048	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:050	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:055	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:062	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:065	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:070	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:078	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:082	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:085	02-22-1995	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 007:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:015	08-07-1984	12-12-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:030	02-02-1983	11-09-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 007:035	11-26-1991	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 007:040	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:050	05-04-1983	05-04-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:060	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 007:070	05-14-1985	09-10-1987	07-03-2018	Remain in Effect without Amendment
405 KAR 007:080	01-06-1983	09-28-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:095	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:097	06-09-1999	06-09-1999	07-03-2018	Remain in Effect without Amendment
405 KAR 007:100	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:110	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 008:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:010	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:020	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 008:030	01-06-1983	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:040	01-06-1983	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:050	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 010:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 010:015	09-06-2012	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:025	12-05-2014	12-05-2014	07-03-2018	Remain in Effect without Amendment
405 KAR 010:030	01-06-1983	09-06-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 010:035	10-09-1984	10-09-1984	07-03-2018	Remain in Effect without Amendment
405 KAR 010:040	01-06-1983	04-24-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 010:050	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 010:070	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:080	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:090	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 012:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 012:010	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 012:020	01-06-1983	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 012:030	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment

## CERTIFICATION LETTER SUMMARIES

[illegible]

## CERTIFICATION LETTER SUMMARIES

[illegible]



## CERTIFICATION LETTER SUMMARIES

601 KAR 002:020	09-01-1998	08-10-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:015	05-14-1975	11-05-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:090	01-04-1984	11-02-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:160	05-23-1994	03-14-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:205	01-03-2011	01-03-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 009:210	12-19-2001	04-01-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 011:035	10-04-2011	10-04-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 012:060	10-01-1991	07-02-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 014:030	11-05-2010	11-05-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 023:010	02-05-2010	02-05-2010	10-08-2018	Remain in Effect without Amendment
603 KAR 004:035	11-03-1982	02-15-2012	10-08-2018	Remain in Effect without Amendment
603 KAR 007:080	01-25-2012	01-25-2012	10-08-2018	Remain in Effect without Amendment
805 KAR 001:020	08-02-1978	09-25-1991	07-03-2018	Remain in Effect without Amendment
805 KAR 001:030	11-13-1975	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:040	04-09-1975	04-09-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:050	04-09-1975	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:060	06-11-1975	12-07-2017	06-27-2018	Remain in Effect without Amendment
805 KAR 001:080	06-11-1975	06-11-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:100	08-13-1975	09-03-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:110	09-01-1984	04-04-2008	06-27-2018	Remain in Effect without Amendment
805 KAR 001:120	09-25-1991	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:130	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:140	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:160	07-09-1997	07-09-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:170	07-09-1997	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:180	11-12-1997	11-12-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:190	03-18-2004	11-17-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:200	10-23-2009	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 002:010	12-11-1974	12-11-1974	06-27-2018	Remain in Effect without Amendment
805 KAR 003:010	05-14-1975	09-22-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 003:020	05-14-1975	07-09-1985	06-27-2018	Remain in Effect without Amendment
805 KAR 003:030	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:040	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:060	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:070	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:080	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:090	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:100	05-14-1975	02-05-2016	06-27-2018	Remain in Effect without Amendment
805 KAR 003:110	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:120	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:005	09-01-1976	06-07-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 004:010	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:020	07-02-1975	07-02-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:030	07-02-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:040	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:050	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:060	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:075	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:080	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:085	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:087	03-02-1977	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:090	09-01-1976	09-07-1983	06-27-2018	Remain in Effect without Amendment
805 KAR 004:093	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:095	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment

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805 KAR 004:100	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:105	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:110	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:115	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:120	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:125	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:130	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:135	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:140	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:145	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:150	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:155	06-26-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:160	06-27-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:165	06-28-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 005:010	09-01-1976	10-14-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 005:030	11-09-1992	12-11-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 005:070	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 007:010	10-05-1977	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 007:020	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:030	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:040	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:050	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:060	07-05-1978	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:070	02-07-1979	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:080	12-11-1996	03-06-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 007:090	10-13-1999	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:100	08-06-2007	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 008:010	09-16-2002	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 008:030	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:040	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:050	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:060	09-16-2002	09-02-2010	06-27-2018	Remain in Effect without Amendment
805 KAR 009:010	06-08-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:020	06-09-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:030	06-10-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:050	06-11-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:060	06-12-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:070	06-13-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:080	06-14-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:090	06-15-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:100	06-16-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 011:001	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:010	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:020	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
825 KAR 001:020	06-14-2002	12-07-2006	08-06-2018	Remain in Effect without Amendment
825 KAR 001:030	11-12-2002	11-12-2002	08-06-2018	Remain in Effect without Amendment
900 KAR 006:040	12-18-1996	12-18-1996	07-30-2018	Remain in Effect without Amendment
907 KAR 001:260	06-28-1984	01-10-1992	07-23-2018	Remain in Effect without Amendment
907 KAR 001:680	07-26-1995	07-16-2003	07-23-2018	Remain in Effect without Amendment
907 KAR 001:720	11-14-1997	08-12-2002	07-23-2018	Remain in Effect without Amendment
907 KAR 001:755	04-21-1999	04-21-1999	07-23-2018	Remain in Effect without Amendment
907 KAR 001:780	08-18-1999	08-18-1999	07-23-2018	Remain in Effect without Amendment
907 KAR 003:100	08-16-1999	12-02-2010	07-23-2018	Remain in Effect without Amendment

## CERTIFICATION LETTER SUMMARIES

907 KAR 003:125	03-06-2001	01-05-2007	07-23-2018	Remain in Effect without Amendment
907 KAR 003:225	11-01-2013	11-01-2013	07-23-2018	Remain in Effect without Amendment
907 KAR 003:230	11-01-2013	11-01-2013	07-23-2018	Remain in Effect without Amendment
907 KAR 005:005	11-05-2010	11-05-2010	07-23-2018	Remain in Effect without Amendment
907 KAR 006:005	05-06-2011	05-06-2011	07-23-2018	Remain in Effect without Amendment
907 KAR 010:815	06-06-2008	06-06-2008	07-23-2018	Remain in Effect without Amendment
907 KAR 014:005	10-21-2009	01-14-2013	07-23-2018	Remain in Effect without Amendment
910 KAR 001:200	01-10-1992	04-01-2011	08-10-2018	Remain in Effect without Amendment
910 KAR 001:260	12-01-2006	12-11-2012	08-10-2018	Remain in Effect without Amendment
910 KAR 003:020	05-01-2009	05-01-2009	08-10-2018	Remain in Effect without Amendment
920 KAR 001:060	08-18-1999	03-01-2007	07-23-2018	Remain in Effect without Amendment

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections 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/KAR-frntpage.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
009 KAR 001:050	09-12-2018		
016 KAR 009:040	09-12-2018		
020 KAR 001:010	08-14-2018		
103 KAR 001:010	09-12-2018		
103 KAR 016:320	07-16-2018		
103 KAR 018:020	07-16-2018		
103 KAR 018:090	07-16-2018		
104 KAR 001:020	09-12-2018		
104 KAR 001:040	09-12-2018		
200 KAR 005:365	09-12-2018		
200 KAR 012:030	09-12-2018		
201 KAR 046:081	09-28-2018		
301 KAR 002:132	09-12-2018		
401 KAR 039:005	07-09-2018		
401 KAR 045:020	10-15-2018		
401 KAR 045:025	10-15-2018		
401 KAR 045:030	10-15-2018		
401 KAR 045:090	10-15-2018		
401 KAR 045:130	10-15-2018		
401 KAR 045:250	10-15-2018		
401 KAR 048:090	10-15-2018		
401 KAR 048:200	10-15-2018		
401 KAR 048:300	10-15-2018		
401 KAR 048:310	10-15-2018		
703 KAR 005:280	09-10-2018		
804 KAR 004:370	08-01-2018		
831 KAR 001:030	11-13-2018		
900 KAR 006:040	08-02-2018		
900 KAR 011:010	07-13-2018		
902 KAR 030:180	07-18-2018		
902 KAR 048:020	09-13-2018		
902 KAR 048:030	09-13-2018		
907 KAR 017:020	06-05-2018		
908 KAR 002:250	09-17-2018		
910 KAR 001:240	09-17-2018		
920 KAR 001:060	07-25-2018		
921 KAR 001:400	08-22-2018		
921 KAR 001:410	08-22-2018		

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