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The Administrative Regulation Review Subcommittee is tenta-
vitely scheduled to meet on Tuesday, September 9, 2003, at
10:30 a.m., in Room 149 of the Capitol Annex. See tentative
agenda on pages 549 - 552 of this Administrative Register.
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Filing and Publication
Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required 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 for a 30 day period following publication.

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

The administrative body shall notify the Compiler, by phone and letter, if the hearing is cancelled and no written comments are received. If the hearing is held or written comments are received, the administrative body shall file a statement of consideration with the Compiler within 15 days following the last day of the comment period.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure
After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.
STATEMENT OF EMERGENCY
301 KAR 2:081E

Due to the eminent threat of wildlife diseases spread by exotic wildlife species, and the threat of these diseases may and can have upon human health and safety as well as the health of Kentucky’s ecosystems, procedures are needed for the transportation of native wildlife into Kentucky. Also, requirements and procedures for holding wildlife once wildlife is brought into Kentucky are needed to ensure that wildlife is contained so as to minimize the potential spread of disease and disturbance to Kentucky’s ecosystems. A recent example of a threat of wildlife disease is monkeypox, an orthopox virus related to smallpox, and transmitted by animals such as the prairie dog (Cynomys spp.), which are commonly sold in Kentucky’s pet stores. An ordinary administrative regulation will not suffice because the administrative regulation will not become effective in time to deter the spread of monkeypox and other exotic wildlife diseases.

This emergency administrative regulation replaces the emergency administrative regulation filed June 30, 2003. This administrative regulation is substantially different from the content of the previously filed administrative regulation for the following reason: a typographical error, inserting a zero, stating the annual wildlife transportation fee was corrected. Prior to the correction, the fee was incorrect. This correction is in conformity with the Regulatory Impact Analysis, which stated the fee correctly and also the annual transportation permit which is incorporated by reference and attached to the administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 23, 2003.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources (Emergency Amendment)

301 KAR 2:081E. Transportation and holding of native wildlife [Pot and propagation permits].

RELATES TO: KRS 150.015, 150.180, 150.280, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.420
STATUTORY AUTHORITY: KRS 150.025, 150.180, 150.280
EFFECTIVE: July 24, 2003

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for regulating the propagation and holding of protected wildlife. This administrative regulation is necessary to control the indiscriminate possession of wildlife and to ensure that wildlife is humanely and properly cared for, (i) to protect the public and native wildlife from wildlife-borne diseases, and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.

Section 1. Definitions. (1) "Albinistic" means an animal lacking brown or black pigment.

(2) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals, but shall not include a show including wrestling bears or other direct contact between members of the public and inherently-dangerous animals.

(3) "Leucistic" means a predominantly white animal.

(4) "Native wildlife" means wildlife which have historically existed or currently exist in the wild in Kentucky without introduction by man, not including naturalized introduced species such as starlings, house sparrows and Eurasian collared doves.

(5) "Xanthic" means a predominantly yellow animal.

Section 2. (1) Except as specified in subsection (2) of this section, a person shall not import or possess:

(a) Alligator snapping turtle (Macrochelys temminckii);
(b) Black bear (Ursus americanus);
(c) Copperbelly water snake (Nerodia erythrogaster neglecta);
(d) Cougar or mountain lion (Felis concolor);
(e) Any federally threatened or endangered species;
(f) Wild turkey (Meleagris gallopavo); or
(g) Wolf (Canis lupus) or wolf-hybrids. Wolf-hybrids in possession prior to the effective date of this administrative regulation may be retained.

(2) The commissioner may allow the importation or possession of the species listed in subsection (1) of this section by circuses or for legitimate scientific or educational purposes by:

(a) A zoo that is:
   1. A member of the American Zoo and Aquarium Association; or
   2. Designated as the official zoo of a municipality;
(b) A government agency;
(c) A college or university; or
(d) A similar educational or research institution.

Section 3. Taking and Possessing Wildlife. (1) A person shall not hold wildlife in captivity that was not legally taken or possessed.

(2) Except as specified in subsection (6) of this section, a person holding native wildlife in captivity shall apply for and obtain a permit prior to acquiring wildlife.

(3) A person permitted to rehabilitate wildlife as specified in 301 KAR 2:075 shall not be issued a commercial or noncommercial captive wildlife permit.

(4) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for persons wishing to sell, offer to sell, trade, or barter native wildlife. A person shall not sell, offer to sell, trade, or barter native wildlife or parts thereof, obtained from the wild.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(c) The commercial captive wildlife permit fee shall be $100 a year.

(5) Noncommercial captive wildlife permits.

(a) A noncommercial captive wildlife permit is required for persons wishing to possess native wildlife, but do not intend to sell, offer for sale, trade or barter animals.

(b) A noncommercial captive wildlife permit fee shall be seventy-five (75) dollars and be renewable three (3) years from date of issue.

(6) Amphibians and reptiles.

(a) Except as provided for in Section 2(1) of this administrative regulation, captive wildlife permits are not required for persons taking or possessing up to five (5) individuals of each species of a native reptile or amphibian.

(b) There shall not be a limit on the number of individuals of each species a commercial or noncommercial captive wildlife permit holder may possess, provided the permit holder does not take more than five (5) individuals of each species of amphibians or reptile from the wild.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is albinistic, leucistic or xanthic.

(d) All commercial and noncommercial captive wildlife permit holders keeping native amphibians and reptiles shall retain:

1. A certificate of origin;
2. A bill of sale;
3. Receipted invoice; or
4. Other evidence of lawful acquisition of each individual of any taxa captive produced or legally obtained from out of state.

(e) Accurate records for animals, including wild-captured, shall
be maintained for five (5) years by the permit holder and be available for inspection by a department representative at a reasonable hour. Records shall include:

1. Common and scientific names;
2. Number of reptiles or amphibians received or sold;
3. The birth dates of captive born animals;
4. The date, location, and length of all wild-captured taxa; and
5. Date of all transactions including the complete name, address and phone number of the person from whom an animal was purchased, including the seller’s permit number, or to whom the animal was sold, traded, bartered, or given as a gift.

(a) Transportation permits and certificate of veterinary inspection.
(b) Prior to entry into Kentucky, a transportation permit shall be obtained for all shipments of wildlife. Persons shall be responsible for applying for a transportation permit if he or she:

1. Receives a shipment of wildlife;
2. Imports wildlife for his or her own use or possession; or
3. Transports wildlife into and through the state to a destination outside Kentucky.

(c) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.
(d) Individual transportation permits shall be valid for one (1) shipment of wildlife.

(e) Annual transportation permits shall be valid for multiple wildlife shipments for one (1) year from the date of issue. Annual transportation permit holders shall:
1. Notify the department in writing of any changes or additions subsequent to the original application so that the permit may be amended prior to future wildlife importation; and
2. Notify the department by telephone Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife of the date of expected shipment, source of the shipment and the species and number being shipped.

(g) All shipments of wildlife shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinarian inspection.

(i) Fees.
1. The individual transportation permit fee shall be twenty-five dollars.
2. The annual transportation permit fee shall be $250.

Section 4. Applying for Permits. (1) Applicants for captive wildlife and transportation permits shall be made on standard forms.

(a) The applicant shall indicate the source of supply of the wildlife.

(b) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(c) A permit holder shall show written proof to a conservation officer upon request.

(d) Applicants shall construct holding facilities that meet or exceed the enclosure specifications established in Section 7 of this administrative regulation for each listed species to be acquired before submitting the captive wildlife application.

(e) Applicants shall possess an approved permit before acquiring animals.

(f) Failure to provide accurate, truthful and complete information on the application form shall result in:

(a) Immediate withdrawal or revocation of the permit; and
(b) Confiscation of the wildlife imported under the permit.

Section 5. Confining Facilities. (1) Cages, pens, or other enclosures for confining native wildlife shall be of sufficient structural strength to:

(a) Prevent the escape of the captive animals;
(b) Protect the caged animal from injury and predators; and
(c) Prevent the entrance of free individuals of the same species.

(d) Wing-clipped and pinioned birds may be kept in suitable enclosed enclosures even though wild birds of the same species may enter the enclosure.

(e) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the
2. Evening and red bats shall be kept in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. Big brown and hoary bats shall be kept in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

4. Foxes, bobcats and raccoons shall be held in an enclosure with the following minimum specifications:
   (a) A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width;
   (b) There shall be thirty (30) square feet floor space for each additional animal.

5. Coyotes shall be held in an enclosure with the following minimum specifications:
   (a) A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width;
   (b) There shall be twenty-five (25) square feet floor space for each additional animal.

6. Beaver and otter shall be held in an enclosure with the following minimum specifications:
   (a) A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;
   (b) There shall be an increase in horizontal cage size by eight (8) square feet for each additional animal.
   (c) Ofers shall have a slide and a dry place for sleeping and retreat;
   (d) Beavers shall be supplied with gnawing logs and a dry place for sleeping and retreat.

7. Muskrat and mink shall be held in an enclosure with the following minimum specifications:
   (a) A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;
   (b) There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and
   (c) Muskrats shall have gnawing material.

8. Gray squirrels and fox squirrels shall be held in an enclosure with the following minimum specifications:
   (a) A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and
   (b) There shall be an increase in floor space by two (2) square feet for each additional animal.

9. Skunks, opossum, rabbit and woodchuck shall be held in an enclosure with the following minimum specifications:
   (a) A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.; and
   (b) There shall be an increase in floor space by four (4) square feet for each additional animal;
   (c) Woodchucks shall have several gnawing logs approximately six (6) inches in diameter.

10. Wrasse shall be held in an enclosure with the following minimum specifications:
    (a) A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and
    (b) There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 7. Mobile Facilities. Mobile facilities used in transporting wildlife shall comply with the following requirements:
(1) Facilities shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements;
(2) The animal housing area shall be free of engine exhaust fumes;
(3) Cages shall be large enough to ensure that each specimen has sufficient room to stand erect and lay naturally;
(4) The structural strength of the enclosure shall be sufficient to contain the animals and to withstand the normal rigors of transport and;
(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 8. Temporary Facilities. Native wildlife housed in temporary facilities or exhibits shall be housed in cages that meet the minimum cage specifications as provided in the section on stationary facilities when wildlife are present in any geographical location for more than ten (10) days.

Section 9. Inspections. (1) The holder of a captive wildlife permit shall allow a conservation officer to inspect the facilities at any reasonable time.

2. The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is being kept in unsanitary or inhumane conditions.

3. The captive wildlife permit shall be revoked and all captive wildlife confiscated if the unsatisfactory conditions are not corrected within ten (10) days of the initial inspection.

4. The captive wildlife permit shall be revoked and all captive wildlife confiscated if an application was not made in good faith or if the permit holder is convicted on any violation concerning the species for which he holds the permits.

5. Fees shall not be refunded for permits that are revoked.

Section 10. Incorporator by Reference. (1) The following material is incorporated by reference:
(a) "The Commercial and Noncommercial Captive Wildlife Permit Application, 2003 edition;"
(b) "The Annual Transportation Permit Application, July 2003 edition;" and
(c) "The Individual Transportation Permit Application, July 2003 edition;"

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (Wildlife is defined by KRS 150.010(11).)

Section 2. Taking and Possessing Wildlife. (1) A person shall not hold wildlife in captivity which was not legally taken or possessed.
(2) When taking and possessing wildlife, a permit shall be secured from the appropriate agency.

Section 3. Importation of Passengers-Prohibited. A person shall not import or possess the following wildlife: wild hog, jack rabbit, mink, muskrat, javelina, nutria, wild turkey, and bobcat, cougars, raccoons, etc. (M. yonny, p. progouenoides), and wolf.

Section 4. Permits. (1) Commercial pet and propagation permits. (a) A person buying, selling, possessing, propagating or exhibiting wildlife for commercial purposes shall obtain a commercial pet and propagation permit from the department.
(b) Commercial permit holders shall obtain wildlife only from permitted or qualified sources as determined by the commissioner.
(c) Determination of wildlife permitted to be possessed, transported, bought, sold, or exhibited shall be made by the commissioner or his appointed representative.
(2) Noncommercial pet and propagation permits. (a) A person possessing, purchasing, or propagating wildlife for noncommercial purposes shall obtain a noncommercial pet and propagation permit from the department within ten (10) days after the wildlife is acquired.
(b) Holders of noncommercial permits may obtain wildlife legally from the wild or from a permitted or qualified source as determined by the commissioner.
(c) Transportation permits and veterinarian certificates.
(d) A person importing, transporting, or receiving shipment of live wildlife shall first obtain a transportation permit from a conservation officer. A nonresident receiving wildlife shipments in Kentucky may apply directly to the department.
(e) All shipments of wildlife shall be accompanied by a veterinarian's certificate stating that the wildlife is free of symptomatic diseases. A federal quarantine certificate may be substituted for the veterinarian's certificate.
(f) Commercial and noncommercial permits are renewable annually from dates of issue.

Section 5. Applying for Permits. (1) All applications for pet or propagation permits shall be made on standard forms.
(2) The applicant shall indicate the source of supply of the wildlife.
(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(4) A permit holder shall show this written proof to a conservation officer upon request.

Section 6. Confining facilities and inspections. (1) Confining facilities shall be large enough to allow reasonable space for exercise, selection, and other maintenance of sanitary conditions.

(2) The holder of a pet or propagation permit shall allow a conservation officer to inspect the facility at any reasonable time.

(3) The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is being kept under unsanitary or inhumane conditions.

(4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked if all captive wildlife is not kept immediately if the unsatisfactory conditions have not been corrected.

(5) The pet or propagation permit shall be revoked and all wildlife confiscated if it becomes apparent that an application was not made in good faith, or if the permit holder is convicted of any law violation concerning the species for which he holds a permit.

(6) Fees shall not be refunded for permits which are revoked.

Section 7. Conditions for Selling Wildlife. (1) The carcasses of wild deer, wild elk, wild turkey, wild rabbit or euripil shall not be sold.

(2) Other wildlife or parts thereof produced on a permitted commercial propagation facility may be sold.

(3) The pelts of fur-bearing may be sold during the regular open season or at other times by written permission of the commissioner.

(4) All wildlife sold alive for propagation purposes or to commercial hunting preserves shall bear a tag on each crate stating the name and address of the propagator and permit number. The tags may be obtained from the department.

(5) All propagated wildlife sold for food purposes shall be tagged with tags obtained from the department.

Section 8. Sale of Bobwhite Quail for Food Purposes. (1) A person who sells bobwhite quail for human consumption shall have a food purposes permit from the department. This food purposes permit is valid for one (1) year from date of issue.

(2) This permit shall be in addition to all other permits required for the operation of propagation farms.

(3) The holder of a food purposes permit shall present to a person buying quail an invoice in triplicate showing the number of birds and the date of sale.

(4) The seller shall have the invoice signed by the purchaser.

(5) The seller shall mail one (1) copy of the invoice to the department.

(6) The seller and purchaser shall retain one (1) copy of the invoice for at least one (1) year.

(7) A person who sells bobwhite quail for food purposes to restaurants or stores which do not possess a valid sale for food certificate.

C. THOMAS BENNETT, Commissioner
DR. JAMES RICH, Chairman
ANN R. LATTIA, Secretary
APPROVED BY AGENCY: June 13, 2003
FILED WITH LRC: July 24, 2003 at 2 p.m.
CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, 51 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of;

(a) What the administrative regulation does: The administrative regulation establishes the application procedure for transportation and holding permits for native wildlife; the facility specifications; inspection procedures; and conditions for selling wildlife.

(b) The necessity of the administrative regulation: To establish requirements for the safe operation of commercial and noncommercial wildlife facilities for the health and safety of the wildlife and the health and safety of humans.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.180 authorizes the department to promulgate administrative regulations governing the purchase, sale and transportation of wildlife.

(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.180 authorizes the department to promulgate administrative regulations for the purchase, sale and transportation of wildlife. This administrative regulation will supplement the statute by providing the specific procedures for taking, possessing and transporting wildlife. The administrative regulation establishes requirements for applying for transportation, commercial captive wildlife permits and commercial captive wildlife permits and establishes the requirements for holding facilities, both temporary and permanent.

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

(a) How the amendment will change the existing administrative regulation: The amendment reorganizes the administrative regulation in a more easily read fashion; and establishes the wildlife transportation permitting process.

(b) The necessity of the amendment to this administrative regulation: To establish safety measures and transportation protocol to deter the spread of monkeypox and other diseases.

(c) How does the amendment conform to the authorizing statutes: See (a) above.

(d) How the amendment will assist in the effective administration of the statutes: See (a) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who transport, hold, buy and sell wildlife will be affected. There are approximately 158 commercial pet propagation facilities in Kentucky.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees the commercial wildlife propagation permit process. Both divisions current budgets will provide 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: There are fees associated with this administrative regulation. The cost of inspection, administration of the permitting process and enforcement will all be increased. The fees are set forth below. The department does not anticipate having to raise these fees in the near future.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does establish fees. There is a transportation permit fee of $25, and annual transportation permit fee of $250, commercial captive wildlife permit fee of $100 a year, and a noncommercial captive wildlife permit fee of $75 for three years.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all persons who hold, sell and transport wildlife. All the groups of people are treated the same in this administrative regulation.
This emergency administrative regulation is being promulgated to establish a new reimbursement methodology for hospital outpatient services. Services will be reimbursed in accordance with an established fee schedule or at cost. This action must be taken on an emergency basis to maintain the viability of the Kentucky Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients because the Medicaid Program lacks the funds necessary to continue paying for hospital outpatient services in the current manner. This emergency administrative regulation differs from the emergency administrative regulation filed on February 11, 2003, by establishing a new payment methodology for outpatient services. This emergency administrative regulation shall be repealed by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
MARSHA R. MORGAN, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Hospitals and Outpatient Facilities Services
(Emergency Amendment)

907 KAR 1:015E. Payments for hospital outpatient services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.2, 440.20(a)
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1),
205.520(3), 205.560, 205.637, 42 U.S.C. 1396(a), (b), (d)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the 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 the method for determining amounts payable by the Medicaid Program for hospital outpatient services.

Section 1. Definitions. (1) “Critical access hospital” or “CAH” means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(2) “Current procedural terminology code” or “CPT code” means a code used for the reporting of medical services or procedures using the current procedural terminology developed by the American Medical Association.

(3) “Department” means the Department for Medicaid Services or its designee.

(4) “Healthcare common procedure coding system” or “HCPCS” means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(5) “Level 1 service” means services billed using CPT codes 99261.

(6) “Level 2 service” means services billed using CPT codes 99262 and 99263.

(7) “Level 3 service” means services billed using CPT codes 99264, 99265, 99266, and 99267.

(8) “Outpatient cost-to-charge ratio” means the ratio determined by dividing the costs reported on Suppemental Worksheet E-3, part 3, column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.

(9) “Revenue code” means a provider-assigned revenue code for each cost center for which a separate charge is billed.


Section 2. Outpatient Hospital Services. (1) Except for a critical access hospital, for services provided on or after August 1, 2003, the Department for Medicaid Services shall reimburse a participating in-state hospital for outpatient services.

(a) At the following rate for the following procedures:

1. Cardiac catheterization lab
   a. Unilateral - $1,478; or
   b. Bilateral - $1,770;
2. Computed tomography scan - $479;
3. Lithotripsy - $3,737;
4. Magnetic resonance imaging - $593;
5. Observation room - $456; and
6. Ultrasound - $177;

(b) If multiple services listed in paragraph (a) of this subsection are provided, each service shall receive the corresponding rate established in paragraph (a) of this subsection.

(c) The department shall utilize the 1996 Medicare ambulatory surgical center groups to reimburse for an outpatient surgery. The following chart establishes the reimbursement rate for each corresponding surgical group:

<table>
<thead>
<tr>
<th>Ambulatory Surgical Center Group</th>
<th>Reimbursement Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>$397</td>
</tr>
<tr>
<td>Group 2</td>
<td>$534</td>
</tr>
<tr>
<td>Group 3</td>
<td>$610</td>
</tr>
<tr>
<td>Group 4</td>
<td>$753</td>
</tr>
<tr>
<td>Group 5</td>
<td>$858</td>
</tr>
<tr>
<td>Group 6</td>
<td>$1,016</td>
</tr>
<tr>
<td>Group 7</td>
<td>$1,191</td>
</tr>
<tr>
<td>Group 8</td>
<td>$1,191</td>
</tr>
</tbody>
</table>

(d) Reimbursement for an outpatient surgery which does not have a surgical group rate shall be at a facility-specific outpatient cost-to-charge ratio.

(e) For multiple surgeries provided to the same recipient on the same day, only the surgery with the highest reimbursement rate established in paragraph (c) of this subsection, shall be paid.

(f) Except for the services listed in paragraph (g) of this subsection, all other services provided to the same recipient on the same day shall be reimbursed in accordance with paragraphs (a), (b), (c), and (g) of this subsection.

(g) On an interim basis at a facility-specific outpatient cost-to-charge ratio for the following revenue codes:

<table>
<thead>
<tr>
<th>Service</th>
<th>Revenue Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pharmacy</td>
<td>250, 251, 252, 254, 255, 258, 260, 261, 634, 335, 336</td>
</tr>
<tr>
<td>X-ray</td>
<td>320, 321, 322, 323, 324, 330, 342, 420, 400, 403, 920</td>
</tr>
<tr>
<td>Supplies</td>
<td>270, 271, 272, 274, 275, 621, 622, 623</td>
</tr>
<tr>
<td>Room and Miscellaneous</td>
<td>280, 290, 370, 371, 372, 374, 700, 710, 750, 781, 890, 891, 892, 893, 921</td>
</tr>
<tr>
<td>Dialysis</td>
<td>821, 831, 841</td>
</tr>
<tr>
<td>Chemotherapy</td>
<td>330, 331, 332, 333, 334, 335</td>
</tr>
</tbody>
</table>

(h) Services reimbursed in accordance with paragraph (g) of this subsection shall be settled to cos at year end.

(i) Except for pharmacy services billed using revenue codes 250, 251, 252, 254, 255, 258, 260, 261, 634, 335, or 336, medical/surgical supplies billed using revenue codes 270-275, and triage billed using revenue code 451, a hospital shall include all applicable CPT and HCPCS codes on a claim.

(3) Except for services listed in subsection (1)(g) of this section, beginning August 1, 2003, an out-of-state hospital providing outpatient services shall be reimbursed in accordance with subsection (1) of this section.

(4) Services listed in subsection (1)(g) of this section provided by an out-of-state hospital shall be reimbursed by multiplying the average outpatient cost-to-charge ratio of in-state hospitals, excluding critical access hospitals by billed charges period.
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(5)(a) An outpatient hospital laboratory service shall be reimbursed at the Medicare-established technical component rate in accordance with 907 KAR 1:029.
(b) An outpatient hospital laboratory service with no established Medicare rate, shall be reimbursed by multiplying a facility-specific outpatient cost-to-charge ratio by billed charges.
(c) A critical access hospital shall be reimbursed on an interim basis:
   (1) By multiplying charges by the lesser of:
      i. The Medicare cost-to-charge ratio issued by the Medicare fiscal intermediary in effect at the time; or
      ii. The Medicaid outpatient cost-to-charge ratio.
   (2) For a laboratory service in accordance with the Medicaid fee schedule; and
   (3) With a settlement to cost at the end of the year.
(d) A hospital providing outpatient services shall be required to submit a cost report within five (5) months after a hospital’s fiscal year end.
(e) Failure to provide a cost report within the timeframe established in subsection (7) of this section shall result in a suspension of future payment until the cost report is received by the department.
(f) If a cost report indicates payment is due, a provider shall remit payment in full or a request for a payment plan with the cost report.
(g) If a cost report indicates a payment is due and a hospital fails to remit a payment or request for a payment plan, the department shall suspend future payment to the hospital.
(h) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.
(i) If it is determined that an additional payment is due after a final determination of cost has been made by the department, the additional payment shall be due sixty (60) days after notification.
(j) If a hospital fails to submit an additional payment in accordance with subsection (12) of this section, the department shall suspend future payment to the hospital. [Definition: Department means the Department for Medicaid Services or its designee.]

Section 3. Supplemental Payments. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a nonstate government hospital, as defined in 42 C.F.R. 447.321(2), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Sections 2 and 4 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.321.
(2) A payment made under this section shall:
   (a) Not be subject to the cost-settlement provisions established in Section 2 of this administrative regulation; and
   (b) Apply to a service provided on or after April 2, 2001.

Section 4. In-state and Out-of-state Emergency Room Services. (1) Services provided in an emergency room shall be reimbursed as follows:
   (a) The triage service reimbursement rate shall be twenty (20) dollars;
   (b) The level 1 service reimbursement rate shall be eighty-two (82) dollars;
   (c) The level 2 service reimbursement rate shall be $164; and
   (d) The level 3 service reimbursement rate shall be $264.
(2) In addition to the rate paid for services listed in subsection (1) of this section, the following shall be paid at the following rates:
   (a) Cardiac catheterization lab:
      1. Unilateral - $1,478; or
      2. Bilateral - $1,770;
   (b) Computed tomography scan - $479;
   (c) Lithotripsy - $3,737;
   (d) Magnetic resonance imaging - $593;
   (e) Observation room - $458; and
   (f) Ultrasound - $177; and
   (g) If multiple services listed in subsection (2) of this section are provided, each service shall receive the corresponding rate established in subsection (2) of this section.
(3) Except as listed in subsection (5) of this section, a separate payment shall not be made for the services or supplies listed in Section 2(g) of this administrative regulation.
(4) A thrombolytic agent shall be reimbursed at the hospital’s acquisition cost.
(5) A service provided in an emergency room of a critical access hospital shall be reimbursed in accordance with Section 2(8) of this administrative regulation.

Section 5. Appeals. A hospital may appeal a decision as permitted by 907 KAR 1:871.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Appeal Rights. A hospital may appeal a department decision involving the application of this administrative regulation to the hospital’s reimbursement in accordance with 907 KAR 1:674.]
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MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: August 1, 2003
FILED WITH LRC: August 4, 2003 at 4 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator; Cabinet for Health Services, Office of the Counsel, 275 East Main Street SW-D, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Owen (502-564-6204)
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for hospital outpatient services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant DMS the authority to reimburse hospitals for the provision of outpatient services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for hospitals for outpatient 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: The amendment to this administrative regulation establishes that outpatient hospital services shall be reimbursed in accordance with an established fee schedule or at cost.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish that outpatient hospital services shall be reimbursed in accordance with an established fee schedule or at cost in order to ensure the availability of funding for the continued operation of the Medicaid Program.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing, as authorized, that outpatient hospital services shall be reimbursed in accordance with an established fee schedule or at cost.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All hospitals providing outpatient hospital services that are reimbursed by DMS will be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Hospitals which provide outpatient services shall be reimbursed in accordance with an established fee schedule or at cost. This action is a cost-containment measure which will result in the aggregate of all Medicaid participating hospitals who provide outpatient services receiving an aggregate lower reimbursement of $24 million annually.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS estimates that implementing the amendment to this administrative regulation will generate a savings of approximately $24 million annually.
(b) On a continuing basis: DMS estimates that implementing the amendment to this administrative regulation will generate a savings of approximately $24 million annually.

(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: There will not be a need for an increase in funds or funding in order to implement this amendment.

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

(9) Tiering: is tiering applied? Tiering is applied in that critical access hospitals shall be reimbursed based on cost while other hospitals shall be reimbursed in accordance with an established fee schedule or at cost.

STATEMENT OF EMERGENCY
907 KAR 1:031E

This emergency administrative regulation is being promulgated to establish provisions for supplemental payments to licensed county health department home health agencies. Implementing the amendment to this emergency administrative regulation will enable the Department for Medicaid Services (DMS) to receive federal funds via a intergovernmental fund transfer arrangement between DMS and any qualifying local county health department providing home health services and will enhance recipient access to home health services. This action is vital to the well being of the Commonwealth's elderly citizens. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients who would otherwise lack access to necessary services and would potentially result in a loss of federal funds made available for these supplemental payments. These federal funds are critically necessary at this time in order to ensure the continued operation of the Medicaid Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation for 907 KAR 1:031 shall be filed concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor
MARCIA R. MORGAN, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long Term Care and Disability Services
(Emergency Amendment)

907 KAR 1:031E. Payments for home health services.

RELATES TO: 42 C.F.R. 440.70, 447.325, 42 U.S.C. 1396a-d
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3)
EFFECTIVE: August 4, 2003
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Kentucky 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 citizens. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for home health agency services that are provided to Kentucky's Medicaid eligible recipients.

Section 1, Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.
(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.
(3) "Cost report instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.
(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Home health agency" or "HHA" means an agency defined pursuant to 42 C.F.R. 440.7(d).

(6) "Interim rate" means a rate set for a provider for tentative reimbursement, based on reasonable allowable cost of providing a covered service, which may result in reimbursement adjustments after an audit or review determines the actual allowable cost during an accounting period.

(7) "Medicaid upper limit" means the maximum amount the Medicaid Program shall reimburse, on a facility-by-facility basis, for a unit of service.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Medicare upper limit" means the maximum reimbursement amount allowed by Medicare specific to:
   (a) Each Medicare participating provider;
   (b) Each category of service; and
   (c) A unit of service.

(10) "Necessary function" means that if an owner of an agency had not provided the services pertinent to the operation of an HHA, a facility would have had to employ another person to perform the services.

(11) "Owner" means a person or a related family member with a cumulative ownership interest of five (5) percent or more.

(12) "Projected cost report" means an Annual Medicaid Home Health/HCB Cost Report that reflects costs that can reasonably be expected to be incurred by a provider for a specific period of time ending in the future.

(13) "Public agency" means an agency operated by a federal, state, county, city or other local governmental agency or instrumentality.

(14) "Rate year" means a twelve (12) month period beginning July 1 and ending the following June 30.

(15) "Related family member" means:
   (a) Husband or wife;
   (b) Natural or adoptive parent, child, or sibling;
   (c) Stepparent, stepchild, stepbrother, stepsister;
   (d) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;
   (e) Grandparent or grandchild;
   (f) Spouse of grandparent or grandchild;
   (g) Aunt or uncle; or
   (h) Spouse of aunt or uncle.

(16) "Settled" or "settlement" means an amount by which a provider's interim Medicaid payment for a specified period of time is adjusted based on an audited or desk reviewed cost report for that same period of time.

(17) "Uniform desk review" or "UDR" means an analysis of a provider's Annual Medicaid Home Health/HCB Cost Report to determine if the data is adequate, complete, accurate, and reasonable.

(18) "Usual and customary charge" means the uniform amount which a medical provider charges the general public for a specific service or procedure.

Section 2. Reimbursement Requirement. A home health service shall be provided in accordance with 907 KAR 1:030 to be eligible for reimbursement.

Section 3. Payment to an In-state HHA. (1) The department shall reimburse a Medicaid participating in-state HHA on the basis of an interim rate established pursuant to subsection (2) of this section for the following services:
   (a) Speech therapy;
   (b) Physical therapy;
   (c) Occupational therapy;
   (d) Medical social services;
   (e) Home health aide services; and
   (f) Skilled nursing services.

(2) The interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA as follows:
   (a) The department shall use cost data for each category of service from an HHA's most recent available Annual Medicaid Home Health/HCB Cost Report as of May 31 immediately preceding the rate year to set the interim rate;
   (b) Medicaid specific data for units of service shall be adjusted using the Medicaid paid claims data;
   (c) Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor's, by:
      1. Trebling the total cost data to the beginning of a rate year; and
      2. Indexing cost data established pursuant to subparagraph 1 of this paragraph for inflationary cost increases projected to occur during the rate year;
   (d) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (c)2 of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection;
   (e) If a nonpublicly-operated HHA is eligible to receive a cost containment incentive payment pursuant to Section 5 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 5(1) of this administrative regulation to the average unit cost established pursuant to paragraph (d) of this subsection;
   (f) The interim rate for a publicly-operated HHA shall be the lesser of:
      1. The average unit cost pursuant to paragraph (d) of this subsection;
      2. The Medicare upper limit as issued to the provider through a Medicare letter; and
   (g) The interim rate for a nonpublicly-operated HHA shall be the lesser of:
      1. Maximum average unit cost as established pursuant to paragraph (d) or (e) of this subsection that the provider is eligible to receive;
      2. Medicaid upper limit pursuant to Section 7 of this administrative regulation; or

(3) The department shall establish an interim payment not to exceed the allowable billed charge for an item listed in paragraphs (a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the item as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:
   (a) Disposable medical supplies; and
   (b) Enteral nutritional products.

(4) For a facility whose fiscal year ended on or before May 31, 2003, within eighteen (18) months following the end of the [a] facility's fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be:
   (a) Settled To the lesser of:
      1. Allowable Medicaid cost, as established in an HHA cost report that the department has:
         a. Audited; or
         b. Desk reviewed; or
      2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a) of this subsection; and
   (b) Settled Utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference.

(5) For a facility whose fiscal year ended on or after June 30, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsection (3) of this section shall be:
   (a) Settled To the lesser of:
      1. Allowable Medicaid cost, as established by the "Kentucky Medicaid Medical Supply Cost Settlement Worksheet, June 2003 edition" that the department has:
         a. Audited; or
         b. Desk reviewed; or
      2. Allowable billed charge reported by the Medicaid Manage-
pel Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a) of this subsection; and
(b) Settled utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference to subsection (6) (a) of this section indicates that the department has overpaid a provider, the excess payment to the provider shall be recovered pursuant to 907 KAR 1:671, Section 2.
(b) If a settlement pursuant to subsection (4) of this section indicates that the department has underpaid a provider, a payout shall be issued to the provider through the MMIS during the next cycle following the discovery of the underpayment.

Section 4. Payment to a New In-state HHA. (1) An HHA that undergoes a change of ownership during a rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.
(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 3 of this administrative regulation after the provider submits a cost report pursuant to Section 8 of this administrative regulation.
(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall:
(a) Considered a new HHA; and
(b) Reimbursed at the interim rate equal to the lesser of:
1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 7(2)(e) of this administrative regulation; or
2. The current Medicare upper limits.
(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:
(a) Submitted pursuant to Section 8 of this administrative regulation; and
(b) Received by the department by May 31 preceding the rate year.
(5) If, during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department may grant a rate change if the provider:
(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and
(b) Submits a projected cost report.
(6) When a new HHA's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 3(4) of this administrative regulation.

Section 5. Incentive Payment. (1) If a nonpublicly-operated HHA's nonaggregated base year costs are below the Medicaid upper limits pursuant to Section 7 of this administrative regulation for the corresponding period of time, the HHA shall receive a cost containment Incentive payment, pursuant to Section 3(2)(e) of this administrative regulation, in accordance with the following payment schedule:

<table>
<thead>
<tr>
<th>PERCENTAGE OF PER UNIT COST TO UPPER LIMIT</th>
<th>INCENTIVE PAYMENT PER VISIT AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>95.01% - 100%</td>
<td>--</td>
</tr>
<tr>
<td>90.01% - 95%</td>
<td>$1.00</td>
</tr>
<tr>
<td>85.01% - 90%</td>
<td>$1.50</td>
</tr>
<tr>
<td>80.01% - 85%</td>
<td>$2.00</td>
</tr>
<tr>
<td>80% and below</td>
<td>$2.50</td>
</tr>
</tbody>
</table>

(2) An incentive payment shall:
(a) Be subject to verification of visits;
(b) Bear an inverse relationship to the current year base per visit cost; and
(c) Be adjusted each July 1 during the interim rate setting process pursuant to Section 3 of this administrative regulation for the rate year.
(3) The portion of an interim rate equal to the "incentive payment per visit amount" shall not be subject to retrospective settlement pursuant to Section 3(4) of this administrative regulation.

Section 6. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a costed service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 3 of this administrative regulation.
(2) Except as provided in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky shall be reimbursed the lesser of the agency's:
(a) Usual and customary billed charge;
(b) Medicare upper limit; or
(c) Medicaid upper limit.
(3) If an out-of-state HHA provides the following items to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at eighty (80) percent of the HHA's usual and customary actual billed charges for:
(a) Disposable medical supplies; and
(b) Enteral nutritional products.

Section 7. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 3(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.
(2) Medicaid upper limits shall be determined by the department as follows:
(a) Based on the Standard Metropolitan Statistical Area (SMSA) designation, a nonpublicly-operated HHA shall be classified as:
1. Urban; or
2. Rural.
(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section.
(c) Each HHA's average unit cost per service as established pursuant to Section 3(2)(d) of this administrative regulation shall be:
1. Grouped pursuant to paragraph (b) of this subsection; and
2. Arrayed from lowest to highest.
(d) The median per unit cost for each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 3(2)(b) of this administrative regulation.
(e) Medicaid upper limits for a nonpublicly-operated HHA shall be set at 105 percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.
(3) The following HHAs shall be exempt from the Medicaid upper limits, but shall be subject to the Medicare upper limits:
(a) A publicly-operated HHA; or
(b) A new HHA who does not have two (2) full years of operation.
(4) The Medicaid upper limit for skilled nursing services shall be the Medicare upper limit for skilled nursing services.

Section 8. Financial Data and Cost Reporting Requirements. (1) Except for a provider identified in Section 9(2) of this administrative regulation, an HHA shall submit to the department a completed cost report:
(a) That includes workpapers utilized to prepare the cost report including:
1. Detail of how a reclassification or an adjustment was calculated;
2. A working trial balance; and
3. Schedules tying the trial balance to the cost report;
(b) On an annual basis, within five (5) months after the close of the HHA's fiscal year;
(c) Prepared in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions; and
(d) Pursuant to 42 C.F.R. 413.24(a), (b), (c), and (e).
(2) A thirty (30) day extension of time for submitting a cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care and Disability Services or his designee if:
(a) A provider's operations are significantly adversely affected
due to extraordinary circumstances over which the provider has no control;
(b) The provider submits a request for the extension in writing; and
(c) The request is received by the department within five (5) months after the close of the HHA's fiscal year.
(3) An HHA's payment shall be suspended if:
(1) Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed; and
2. A cost report has not been submitted to the department;
(b) The department determines that the HHA does not maintain or no longer maintains records pursuant to subsection (4) of this section; or
(c) The provider fails to provide the department with access to records pursuant to:
1. 907 KAR 1:672, Section 2(6); or
2. Subsection (4) of this section.
(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, the HHA shall retain and make available to the department:
(a) Records and documents pursuant to 42 C.F.R. 413.20(a), (c), and (d); and
(b) Documentation of work or services performed if compensation is claimed by the:
1. Owner; or
2. A related family member of the:
   a. Owner; or
   b. Administrator.
(5) If during a twelve (12) month period an HHA contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1:030 costing or valued at $10,000 or more, the HHA shall include a clause in the contract that requires a subcontractor to make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section.
(6) If the department is denied access to a subcontractor's records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.
(7) If an HHA has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be withheld until:
(a) A cost report is received from the HHA provider for the period of time the provider participated in the Medicaid Program:
   1. Beginning with the first day of the provider's fiscal year immediately preceding the provider's termination date; and
   2. Ending on the date of termination of its provider agreement with the Medicaid Program; and
(b) A final settlement pursuant to Section 3(4) of this administrative regulation is completed by the department.

Section 9. Allowable HHA Cost. (1) Except as limited pursuant to Section 10 of this administrative regulation, cost pursuant to subsection (2) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:
(a) Reflective of a provider's actual expenses of providing a service; and
(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.
(2) Except as limited by Section 10 of this administrative regulation, and subsection (1) of this section, the following costs shall be allowable:
(a) Allowable cost 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; and
(f) Therapy and other services pursuant to 42 C.F.R. 413.106.

Section 10. Limitations on Allowable HHA Cost. (1) Board of directors' fees.
(a) The cost of board of director's fees shall be limited annually to:
1. Five (5) meetings for a single-facility organization; or
2. Twelve (12) meetings for a multiple-facility organization; and
$200 for each director of the board attending each meeting, including the cost of attending the meeting.
(b) The cost associated with a private club membership shall not be an allowable cost.
(2) Motor vehicles.
(a) An allowable motor vehicle cost shall be:
   1. Limited to cost related to patient care; and
   2. Documented sufficiently to support business use.
(b) An allowable Cost associated with HHA facility-owned vehicles and mileage allowances shall be limited to the federal income tax mileage allowance.
(c) The costs associated with personal use of a facility-owned motor vehicle shall not be an allowable cost unless the value of the personal use of the vehicle is:
   1. Included in the employee's W-2 statement; or
   2. Reported on a Form 1099 in accordance with Internal Revenue Service regulations.
(d) An allowable cost pursuant to paragraph (c) of this subsection shall be considered compensation to the extent that:
   1. Compensation to an owner does not exceed owner's compensation limits pursuant to Section 11 of this administrative regulation; and
   2. The total compensation package to a nonowner is reasonable pursuant to 42 C.F.R. 413.9(b).
(3) The cost associated with political contributions shall not be allowable.
(4) The following legal fees shall not be allowable costs:
(a) A legal fee associated with unsuccessful lawsuits against the Cabinet for Health Services or the department;
(b) A legal fee incurred by the provider in an attempt to block the approval of a certificate of need for another provider;
(c) A legal fee associated with the acquisition of another HHA;
(d) A legal fee resulting from the commission of an illegal act by an:
   1. HHA;
   2. HHA's owner; or
   3. HHA's agent; or
   (e) A legal fee unrelated to patient care.
(5) Legal fees associated with successful lawsuits against the cabinet shall be limited to inclusion as allowable cost in the period:
1. In which a suit is settled after a final decision has been issued that the lawsuit is successful;
2. Agreed to by involved parties; or
3. As ordered by the court.
(6) Travel expenses. The cost of travel expenses shall be limited to:
(a) Activities related to the educational needs of the:
   1. Agency owners;
   2. Directors; or
   3. Staff;
   (h) Reasonable and necessary cost pursuant to 42 C.F.R. 413.9(b) as determined in evaluating the:
   1. Number of trips taken;
   2. Expense associated with each trip;
   3. Number of persons attending each function; and
   4. Appropriateness of a training; and
   (c) Trips taken within the forty-eight (48) contiguous United States.

Section 11. Owner's Compensation Limits. (1) Compensation to an owner who is not an administrator shall:
(a) Be considered an allowable cost pursuant to 42 C.F.R. 413.102; and
(a) Exclude:
1. Board of directors' fees; and
2. Fringe benefits routinely provided to all employees.
(b) Compensation of a part-time owner-employee performing managerial functions shall not exceed the percent of time worked times eighty (80) percent of the applicable compensation limits for
an owner administrator.

(3) A full-time owner-administrator or full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated shall be limited to:

(a) Reasonable compensation from the nonprimary agency for not more than fourteen (14) hours per week supported by:
   1. The owner's proof of performance of a necessary function; and
   2. Documentation of time claimed for compensation; and
(b) A salary from the agency with which he is primarily associated.

(4) Managerial functions performed in a nonprimary agency by a full-time owner-administrator or a full-time owner-employee of another agency shall not be considered an allowable cost.

(5) Compensation to an owner-administrator of a rural or urban HHA shall be:

(a) Limited to $60,579 beginning July 1, 1999;
(b) Increased on July 1 of each year by the inflation factor index for wages and salaries of the Home Health Agency Market Basket of Operating Cost as indicated by the National Forecasts supplied by Standard and Poor's, Inc.; and
(c) Published annually through a notification to all providers to advise of the revised limits for owner's compensation to be effective July 1 of each year.

Section 12. Audit Functions. (1) All HHA provider costs applicable to a Medicaid beneficiary shall be subject to:

(a) Review or audit by the department; and
(b) A final retroactive settlement based upon an adjustment to an HHA provider's costs reported in a cost report for any reporting period under review or audit.

(2) The department shall perform a uniform desk review (UDR) of each provider's annual cost report.

(3) A summary of the UDR shall be used:

(a) To settle the cost report without audit; or
(b) To determine the extent to which audit verification is required.

(4) If indicated by the uniform desk review, an audit shall be conducted in accordance with the "Government Auditing Standards".

Section 13. Payment Amounts for State Fiscal Year (SFY) 2002. Effective July 1, 2001, the payment rate that was in effect on June 30, 2001 for a home health service shall remain in effect until July 1, 2002.

Section 14. Payment Amounts Effective July 1, 2002. A participating HHA shall be reimbursed for a home health service provided in accordance with 907 KAR 1:030 at the lesser of:

1. The provider's usual and customary charge; or
2. The Medicaid fixed upper payment limit per unit of service as established in Section 15 of this administrative regulation.

Section 15. Fixed Upper Payment Limits Effective July 1, 2002. The following rates shall be the fixed upper payment limits for home health services:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fixed Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skilled Nursing</td>
<td>$83.00 per visit</td>
</tr>
<tr>
<td>Home Health Aide</td>
<td>$32.50 per visit</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Medical Social Service</td>
<td>$65.00 per visit</td>
</tr>
</tbody>
</table>

Section 16. Supplemental Payments to Licensed County Health Departments. (1) Beginning September 1, 2003, the department shall make supplemental payment to a licensed county health department home health agency equal to the difference between:

(a) Payments received for services on or after November 1, 2002 in accordance with Section 15 of this administrative regulation; and
(b) The estimated cost of providing services during the same time period.

(2) Based on a provider's most recently submitted annual cost report, estimated costs of providing services shall be determined by multiplying the cost per unit by the number of units provided during the period.

(3) If a provider's cost as estimated from its most recently submitted annual cost report is less than the payments received under Section 15 of this administrative regulation, the department shall recoup any excess payments.

Section 17. Reimbursement Review and Appeal. An HHA may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 18. [424] Incorporation by Reference. (1) The following material is incorporated by reference:

(b) The "Annual Medical Home Health/HCB Cost Report Instructions", Department for Medicaid Services, May 1991 edition; and
(c) The "Government Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States;
(d) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet", Department for Medicaid Services, June 2003 edition; and
(e) The "Kentucky Medicaid Medical Supply Cost Settlement Instructions", Department for Medicaid Services, June 2003 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, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 4, 2003 at 4 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Owen (502-564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for home health services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for home health services.
(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 reimbursement methodology for home health services.
(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 the reimbursement methodology for home health 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: The amendment to this administrative regulation establishes provision for supplemental payments to licensed county health departments participating in Kentucky's Medicaid Program and providing home health services. Further, the amendment to this administrative regulation streamlines cost settlement procedures for disposable medical supplies and enteral nutritional products.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure that necessary funds will be available for continued operation of the Medicaid Program.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by enabling DMS to receive federal funding via an intergovernmental fund transfer arrangement between DMS and any qualifying licensed county health department providing home health services. This administrative regulation also conforms to the content of the authorizing statutes by establishing the appropriate cost settlement procedures for disposable medical supplies and enteral nutritional products for providers with a fiscal year end of June 30, 2003. The amendments to this administrative regulation ensure that necessary funds will be available for the continued operation of the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by enabling DMS to receive federal funds via an intergovernmental fund transfer arrangement between DMS and any qualifying licensed county health department providing home health services. This administrative regulation also conforms to the content of the authorizing statutes by establishing the appropriate cost settlement procedures for disposable medical supplies and enteral nutritional products for providers with a fiscal year end of June 30, 2003. The amendments to this administrative regulation ensure that necessary funds will be available for the continued operation of the Medicaid Program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect approximately 12 local county home health department providing home health service and approximately 125 providers enrolled in the home health service program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Beginning September 1, 2003, the department will make additional payments to a local county health department home health agency equal to the difference between payments received for services on or after November 1, 2002. Supplemental payments shall be based on data from the most recently submitted annual cost report. Also, home health providers will be impacted as they will complete a "Medicaid Medical Supply Cost Settlement Worksheet" for fiscal year end June 30, 2003 and submit along with the worksheet their Medicare cost report.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initial: Implementing the amendment to this administrative regulation will enable the Department for Medicaid Services (DMS) to receive federal funds via an intergovernmental fund transfer arrangement between DMS and any qualifying licensed county health department providing home health services. Federal funds of $5,989,280 and state matching funds of $2,210,720 will be expended during state fiscal year (SFY) 2003 and 2004 combined, however, the state matching funds will be provided by the participating licensed county health departments.

(b) On a continuing basis: Implementing the amendment to this administrative regulation will enable DMS to receive federal funds via an intergovernmental fund transfer arrangement between DMS and any qualifying licensed county health department providing home health services. Federal funds of $5,989,280 and state matching funds of $2,210,720 will be expended during state fiscal year (SFY) 2003 and 2004 combined, however, the state matching funds will be provided by the participating licensed county health departments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the amendments to 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: Implementing the amendment to this administrative regulation will enable DMS to receive federal funds via an intergovernmental fund transfer arrangement between DMS and any qualifying licensed county health department providing home health services. Federal funds of $5,989,280 and state matching funds of $2,210,720 will be expended during state fiscal year (SFY) 2003 and 2004 combined, however, the state matching funds will be provided by the participating licensed county health departments.

(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 does not apply to this administrative regulation.

STATEMENT OF EMERGENCY
907 KAR 1:145E

This emergency administrative regulation is being promulgated to require SCL providers to ensure that each staff person, prior to providing direct care, has tested negative for tuberculosis within the past twelve (12) months, to require providers to maintain documentation of tuberculosis test results, and to reduce any unnecessary administrative burden on providers regarding occupational therapy, physical therapy, psychological services and speech therapy to enable them to more efficiently meet recipient needs. The Cabinet for Health Services has discovered that staff who tested positive for tuberculosis have been providing direct care; thus, this action must be enacted on an emergency basis to ensure the health, safety and welfare of SCL recipients. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on December 30, 2002, in that it requires SCL providers to maintain documentation of the results of a tuberculosis test for all staff prior to providing direct care and in that it reduces the administrative burden on SCL providers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
MARCA R. MORGAN, Secretary

CABINET FOR HEALTH SERVICES
Division of Medicaid Services for Mental Health and Mental Retardation
(Emergency Amendment)

RELATES TO: KRS 205.520, 42 C.F.R. 441 [44] Subpart G, 42 U.S.C. 1396a, b, d, n
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.6317 (194A.050, EQ 90-882)
EFFECTIVE: July 22, 2003
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Division of Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 95-882, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to promulgate a regulation that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability [disabilities] as an alternative to placement.

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in an intermediate care facility for an individual with mental retardation or a developmental disability [services for the mentally retarded].

Section 1. Definitions. (1) "Behavior intervention committee" or "BIC" means a group of individuals established to develop the technical adequacy of a proposed behavior intervention for an SCL recipient.

(2) "Behavior support specialist" means an individual who has a master's degree with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(3) "DCBS" means the Department for Community Based Services.

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

(5) "DHMH" means the Department for Mental Health and Mental Retardation Services.

(6) "DMR" means the Division of Mental Retardation in the Department for Mental Health and Mental Retardation Services.

(7) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(8) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(9) "ICF/MR/DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(10) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient's legal representative, support coordinator, or other designee by an SCL recipient.

(11) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(12) "Occupational therapist" means an individual who is licensed in accordance with KRS 319A.010.

(13) "Physical therapist" means an individual who is licensed in accordance with KRS 327.010.

(14) "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(15) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(16) "Qualified mental retardation professional" or "QMRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and meets the professional criteria in accordance with 42 C.F.R. 483.430.

(17) "SCL provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(18) "SCL recipient" means an individual who meets the criteria established in Section 4 of this administrative regulation.

(19) "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(20) "Supports for community living" or "SCL" means home and community-based waiver services for an individual with mental retardation or a developmental disability.

Section 2. SCL Recipient Eligibility, Enrollment and Termination.

(1) To be eligible to receive a service in the SCL program, an individual shall:

(a) Be placed on the SCL waiting list in accordance with Section 6 of this administrative regulation;

(b) Receive notification of potential SCL funding in accordance with Section 6 of this administrative regulation;

(c) Meet ICF/MR/DD level of care requirements established in 907 KAR 1:022;

(d) Meet Medicaid eligibility requirements established in 907 KAR 3:065;

(e) Submit an application packet to DHMH which shall contain:

1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. The Freedom of Choice of Home and Community Based Waiver for Persons with MR/DD Service Providers Form, MAP-4102;

3. The level of care determination;

4. A physical examination that is less than one (1) year old;

5. A statement for the need for long-term care services which shall be signed and dated by a physician or a QMRP and be less than one (1) year old;

6. A psychological examination completed by a licensed psychologist;

7. A social case history which is less than one (1) year old;

8. A projection of the needed supports and a preliminary plan for meeting those needs;

9. A preliminary cost worksheet; and

10. A MAP-24 documenting an individual's status change; and

(l) Receive notification of admission packet approval from the department.

(2) To maintain eligibility as an SCL recipient:

(a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;

(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:065;

(c) An ICF/MR/DD level of care determination shall be performed by the department at least once every twelve (12) months;

(d) An SCL provider shall notify the local DCBS office and the department on a MAP-24 form if an SCL recipient is:

1. Terminated from the SCL waiver program;

2. Admitted to an ICF/MR/DD facility;

3. Transferred to another Medicaid waiver program;

4. An SCL waiver service not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program;

4. Is an inpatient of an ICF/MR/DD or other facility.

(4) The department may suspend or terminate an SCL recipient's services where the aggregate cost of SCL waiver service would reasonably be expected to exceed the cost of ICF/MR/DD service.

(5) Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall include:

(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.

1. The individual or legal representative shall have the burden of providing documentation of good cause, including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility;

b. The length of the transition plan and contingent upon continuance of active participation in the transition plan for an individual who does reside in a facility.

(b) An SCL recipient or legal representative fails to access the required service as outlined in the ISP for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.
2. Upon receipt of documentation of good cause, the department
shall grant one (1) extension in writing which shall be:
(a) Sixty (60) days for an individual who does not reside in a
facility; and
(b) The length of the transition plan and contingent upon contin-
ued active participation in the transition plan for an individual who
does reside in a facility;
(c) An SCL recipient changes residence outside the Common-
welfare of Kentucky; or
(d) An SCL recipient does not meet ICF/MR/DD level of care
criteria.

(6) Involuntary termination of a service to an SCL recipient by an
SCL provider shall require:
(a) Simultaneous notice to the SCL recipient or legal representa-
tive and the support coordinator at least ten (10) days prior to the
effective date of the action, which shall include:
1. A statement of the intended action;
2. The basis for the intended action;
3. The authority by which the action is taken; and
4. The SCL recipient's right to appeal the intended action
through the provider's appeal or grievance process;
(b) Submittal of a DMR-001 to DHMR at least twenty (20) days
prior to the effective date of the intended action; and
(c) The support coordinator in conjunction with the provider to:
1. Provide the SCL recipient with the name, address, and tele-
phone number of each current SCL provider in the state;
2. Provide assistance to the SCL recipient in making contact
with another SCL provider;
3. Arrange transportation for a requested visit to an SCL pro-
vider site;
4. Provide a copy of pertinent information to the SCL recipient or
legal representative;
5. Ensure the health, safety and welfare of the SCL recipient
until an appropriate placement is secured; and
6. Provide assistance to ensure a safe and effective service
transition;
(7) Voluntary termination and loss of an SCL waiver program
placement shall be initiated if an SCL recipient or legal representa-
ive submits a written notice of intent to discontinue services to the
state and DHMR:
(a) An action to terminate services shall not be initiated until
thirty (30) calendar days from the date of the notice; and
(b) The SCL recipient or legal representative may reconsider
and revoke the notice in writing during the thirty (30) calendar day
period.

Section 3. Provider Participation. (1) In order to provide an SCL
waiver service in accordance with Section 4 of this administrative
regulation, an SCL provider shall:
(a) Be certified by the department prior to the initiation of the
service;
(b) Be recertified at least annually by the department; and
(c) Have a main office within the Commonwealth of Kentucky.
(2) An SCL provider shall comply with 907 KAR 1:671; 907 KAR
1:672; 307 KAR 1:673 and 902 KAR 20:078.
(3) An SCL provider shall have a governing body that shall:
(a) Be a legally constituted entity within the Commonwealth of
Kentucky;
(b) Not contain a majority of owners;
(c) Be responsible for the overall operation of the organization
that shall include:
1. Establishing policy that complies with this administrative
regulation concerning the operation of the agency and the health,
safety and welfare of an SCL recipient supported by the agency;
2. Appointing and annually evaluating the executive director;
3. Delegating the authority and responsibility for the manage-
mament of the affairs of the agency in accordance with written policy
and procedures that comply with this administrative regulation;
4. Meeting as a whole at least quarterly to fulfill its ongoing re-
sponsibility and maintaining a record of the discharge of its duties; and
5. Orienting a new member of the governing body to the opera-
tion of the organization.
(4) An SCL provider shall:
(a) Ensure that an SCL waiver service is not provided to an SCL
recipient by a staff member of the SCL provider who has one (1) of
the following blood relationships:
1. Child;
2. Parent;
3. Sibling; or
4. Spouse;
(b) Not enroll an SCL recipient for whom they cannot meet the
support needs;
(c) Have and follow written criteria that comply with this admin-
istrative regulation for determining the eligibility of an individual for
admission to services; and
(d) Document any denial for a service, the reason for the denial,
and identify resources necessary to successfully support the denied
SCL recipient in the community.
(5) An SCL provider shall maintain documentation of its opera-
ations which shall include:
(a) An annual review of written policy and procedures;
(b) A written description of available SCL waiver services;
(c) A current table of organization;
(d) A memorandum of understanding with an SCL support coor-
dinator provider with whom they share individual support plans;
(e) Information regarding satisfaction of an SCL recipient and
the utilization of that information; and
(f) A quality improvement program.
(6) An SCL provider shall:
(a) Maintain accurate fiscal information which shall include
documentation of revenue and expenses;
(b) Maintain a written schedule of policy relevant to rates and
charges that shall be available to any individual upon request;
(c) Meet the following requirements if responsible for the man-
agement of SCL recipient funds:
1. Separate accounting shall be maintained for each SCL recipi-
ent or for his or her interest is a common trust or special account; and
2. Account balance and records of transactions shall be pro-
duced to the SCL recipient or legal representative on a quarterly
basis;
3. The SCL recipient or legal representative shall be notified
when a large balance is accrued that may affect Medicaid eligibility;
(7) An SCL provider shall have a written statement of its mission
and values, which shall:
(a) Promote empowerment and informed decision-making;
(b) Support and assist people to remain connected to natural
support networks; and
(c) Promote dignity and self-worth.
(8) An SCL provider shall have written policy and procedures for
communication and interaction with a family and legal representative
of an SCL recipient which shall:
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction by direct care staff;
(c) Require prompt notification of any unusual occurrence;
(d) Require visitation to the SCL recipient at a reasonable time,
without prior notice and with due regard for the SCL recipient's right
of privacy;
(e) Require involvement in decision making regarding the selec-
tion and direction of the service provided; and
(f) Consider the cultural, educational, language and socioeco-
nomic characteristics of the family being supported.
(9) An SCL provider shall ensure the rights of an SCL recipient
by:
(a) Making available a description of the rights and the means
by which they can be exercised and supported which shall include:
1. The right to timely, safe, and opportunity for personal privacy;
2. The right to communicate, associate and meet privately with
the person of choice;
3. The right to send and receive unopened mail;
4. The right to retain and use personal possessions including
clothing and grooming articles; and
5. The right to private, accessible use of the telephone;
(b) Having a grievance and appeals system that includes an
external mechanism for review of complaints;
(c) Establishing a human rights committee which shall:
1. Include an:
   a. SCL recipient;
b. Individual not affiliated with the SCL provider; and

c. Individual who has knowledge and experience in rights issues;

2. Review and approve all ISP’s with rights restrictions at least annually;

3. Review and approve, in conjunction with the SCL recipient’s team, behavior support plans that include highly restrictive procedures or contain rights restrictions; and

4. Review the use of a psychotropic medication by an SCL recipient with no Axis I diagnosis;

(d) Establishing a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;

2. Be separate from the human rights committee;

3. Review and approve prior to implementation and at least every six (6) months, in conjunction with the SCL recipient’s team, behavior support plans that include highly restrictive procedures or contain rights restrictions; and

4. Review the use of a psychotropic medication by an SCL recipient with no Axis I diagnosis and recommend an alternative intervention when appropriate; and

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10. An SCL provider shall maintain financial and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided. For a minor, the record and incident report shall be maintained for a minimum of six (6) years past the age of twenty-one (21) and all records and incident reports shall be made available to:

(a) The department;

(b) DMMCPR or its designee;

(c) The Commonwealth of Kentucky, Cabinet for Health Services, Office of Inspector General or its designee;

(d) The United States General Accounting Office or its designee;

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;

(f) The Commonwealth of Kentucky, Office of the Attorney General or its designee;

(g) The Commonwealth of Kentucky, Cabinet for Families and Children or its designee; or

(h) The Centers for Medicare and Medicaid Services.

11. An SCL provider shall cooperate with monitoring visits from monitoring agents.

12. An SCL provider shall maintain a record for each SCL recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error that is initialed and dated; and

(d) Contain no blank lines in between each entry;

13. A record of each SCL recipient who is served shall:

(g) Contain all information necessary for the delivery of the SCL recipient’s services;

(b) Be cumulative;

(c) Be readily available;

(d) Contain documentation which shall meet the requirements of Section 4 of this administrative regulation;

(e) Contain a legend that identifies any symbol and abbreviations used in making a record entry;

(f) Contain the following specific information:

1. The SCL recipient’s name, Social Security number and Medicaid identification number (MAID);

2. The intake or face sheet;

3. The self-assessment;

4. An assessment summary relevant to the service area;

5. The current ISP;

6. The training objective for any support which provides skills training to the SCL recipient;

7. The service objective for those supports which do not provide skills training;

8. A list containing emergency contact telephone numbers;

9. The SCL recipient’s history of allergies with appropriate allergy alerts for severe allergies;

10. The SCL recipient’s medication record, including a copy of the prescription or the signed physician’s order and the medication log if medication is administered at the service site;

11. A photograph that is less than one (1) year old of the SCL recipient;

12. Legally adequate consent, updated annually for the provision of services or other treatment which shall include those requiring emergency attention and shall be located at each service site;

13. The individual’s educational plan (IEP) or individual family service plan (IFSP), if applicable;

14. The SCL recipient’s social history updated at least annually;

15. An annual physical exam;

16. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;

17. Psychological evaluation;

18. Original and current level of care certification; and

19. The MAP-552K, Department for Community Based Services Notice of Availability for Long Term Care Waiver Agency/Hospice Form;

(g) Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient’s record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;

19. Have the safety from loss, destruction or use by an unauthorized person ensured by the provider; and

19. Be available to the SCL recipient or legal guardian according to the provider’s written policy and procedures which shall address the availability of the record;

19. An SCL provider shall:

(a) 1. Ensure that each staff, prior to providing direct care to a recipient, has tested negatively for tuberculosis within the past twelve (12) months; and

2. Maintain documentation of each staff person’s negative tuberculosis test described in subparagraph 1 of this paragraph;

(b) Have written personnel guidelines for each employee to include:

1. Salary range;

2. Vacation and leave procedures;

3. Health insurance;

4. Retirement benefits;

5. Opportunity for continuing education; and

6. Grievance procedures;

(c) Provide a written job description for each staff person which describes the employee’s duties and responsibilities;

(d) Annually review each job description;

(e) For each potential employee, obtain a criminal record check from the Administrative Office of the Courts for each state in which the individual resided during the previous year;

(f) Prior to employment and annually thereafter if the individual is hired and

2. Prior to placement as a volunteer performing direct care staff or a supervisory function, and annually thereafter if the individual is placed;

(f) Not employ or place an individual with a prior conviction of an offense delineated in KRS 17.155(1) through (3) or prior felony conviction; and

2. Evaluate the performance of each employee upon completion of the agency’s designated probationary period and at a minimum of annually thereafter.

15. An SCL provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor’s degree in administration or a human service field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;

(b) Have a director of the SCL waiver program who:

1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities;

2. Is a QMRP; and

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met.
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(c) Have adequate direct-contact staff who:
1. a. Is eighteen (18) years or older; and
2. b. Has a high school diploma or GED; or
a. Has effective communication skills; and
b. Has adequate supervisory staff who:
1. a. Is eighteen (18) years or older; and
b. Has a high school diploma or GED; or
2. b. Has twenty-one (21) years or older; and
b. Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability.

(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:

(a) Ensuring the health, safety and welfare of the SCL recipient;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:
1. An operational smoke detector placed in strategic locations;
2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
3. Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 110 degrees Fahrenheit;
4. Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:
   a. Safe storage and use of common household items; and
   b. That firearms and ammunition are permitted;
   c. Only in a family care home or an adult foster care home; and
   d. Only if stored separately and under double lock;
   (f) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Ensuring that staff administering medication:
1. Have specific training and documented competency on cause and effect and proper administration and storage of medication; and
2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:
   a. Be kept in a locked container;
   b. If a controlled substance, be kept under double lock;
   c. Be carried in a proper container labeled with medication and dosage and accompany the recipient to and from the place where the medication is used;
   d. Be documented on a medication administration form and properly disposed of, if discontinued; and

(h) Policy and procedures for ongoing monitoring of medication administration.

(17) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include instruction for notification procedures and the use of alarm and signal systems to alert an SCL recipient according to his or her disability;

(c) Include an evacuation drill to be conducted and documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and

(d) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An SCL provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;

(b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;

(c) Require documentation of all training which shall include:
1. Type of training provided;
2. The name and title of the trainer;
3. The length of the training;
4. The date of completion; and

5. The signature of the trainee verifying completion;

(d) Ensure that each employee complete Phase 1 training, consistent with a DHMR approved curriculum, prior to working independently but no later than three (3) months from the date of employment, which shall include:
1. Individualized instruction on the needs of the SCL recipient to whom the trainee provides support;
2. Training on the identification and reporting of abuse, neglect, and exploitation;
3. Introduction to support for an individual with mental retardation or a developmental disability;
4. Medication and seizures;
5. Safety awareness;
6. Recordkeeping;
7. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
8. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and
9. Medication administration, which shall be provided by a nurse, pharmacist, or medical doctor;

(e) Ensure that each employee complete Phase II training, consistent with a DMH-MR approved curriculum, within six (6) months of employment, which shall include:
1. Introduction to mental retardation and other developmental disabilities;
2. Values and principles;
3. Working with a family;
4. Individualized planning;
5. Understanding behavior;
6. Learning to listen;
7. Health needs and services;
8. Social and sexual aspects of life;
9. Basic home management if the employee has responsibility for:
   a. Laundering;
   b. House cleaning;
   c. Food storage and meal planning; or
   d. An activity in the home; and
10. Nutrition and meal planning if the employee has responsibility for:
   a. Interaction of common medication with food;
   b. Nutritional needs;
   c. Basic meal planning or
   d. Food storage and handling;

(f) Not be required to receive the training specified in this section if the provider is:
1. An occupational therapist providing occupational therapy;
2. A physical therapist providing physical therapy;
3. A psychologist or psychologist with autonomous functioning providing psychological services; or
4. A speech therapist providing speech therapy; and

(g) Ensure that an individual volunteer performing direct care staff or a supervisory function receive training prior to working independently, which shall include:
1. Orientation to the agency;
2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;
3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and
4. Coronary pulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization.

Section 4. Covered Services. (1) An SCL waiver service shall:

(a) Be prior authorized by the department; and
(b) Be provided pursuant to the individual support plan.

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Behavioral support which shall:
   1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
2. Include a functional analysis of the SCL recipient's behavior which shall include:
   a. An analysis of the potential communicative intent of the behavior;
   b. The history of reinforcement for the behavior;
   c. Critical variables that precede the behavior;
   d. Effects of different situations on the behavior; and
   e. The hypothesis regarding the motivation, purpose and factors which maintain the behavior;
3. Include the development of a behavioral support plan which shall:
   a. Be developed by the behavioral specialist;
   b. Be implemented by another SCL provider;
   c. Be revised as necessary;
   d. Define the techniques and procedures used;
   e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
   f. Reflect the use of positive approaches; and
   g. Prohibit the use of corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
4. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;
5. Include the monitoring of an SCL recipient's progress which shall be accomplished through:
   a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
   b. The reports of an SCL provider involved in implementing the behavioral support plan;
6. Be provided by a behavior support specialist who shall have:
   a. A master's degree with formal graduate course work in a behavioral science; and
   b. One (1) year of experience in behavioral programming;
7. Be documented by a detailed staff note which shall include:
   a. The date of the service;
   b. The beginning and ending time; and
   c. The signature, date of signature and title of the behavioral specialist;
8. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;
   b. Community habilitation which shall be:
      a. The provision of support, training and intervention in the areas of:
         a. Self care;
         b. Daily living skills;
         c. Communication;
         d. Behavior support;
         e. Social skills; and
         f. Vocational training;
   2. Provided in the community or a nonresidential setting;
   3. Provided to enable the SCL recipient to:
      a. Participate in a community project as a volunteer in a typically unpaid position;
      b. Access and utilize community resources; and
      c. Utilize a variety of assistance and training to interact with the environment through expressive services which shall be based on goals and be therapeutic rather than diversional;
4. Documented by:
   a. A time and attendance record which shall include:
      i. The date of service;
      ii. The beginning and ending time; and
      iii. The signature, date of signature and title of the individual providing the service, and
   b. A detailed monthly staff note which shall include:
      i. The time, month, day and year for each note written;
      ii. The time, month, day and year for the time period the note covers;
      iii. Progress toward outcomes identified in the ISP;
      iv. Progression, regression and maintenance toward outcomes identified in the ISP; and
      v. The signature, date of signature and title of the individual preparing the summary staff note;
5. Limited to forty (40) hours per week alone or in combination with supported employment and a prevocational service;
   c. Community living supports which shall:
      1. Be provided to facilitate independent and promote integration into the community for an SCL recipient residing in his own home or in his family's home;
      2. Be supports which shall not be diversional in nature and shall include:
         a. Assistance;
         b. Activity training;
         c. Laundry;
         d. Routine household care and maintenance;
         e. Activities of daily living;
         f. Personal hygiene;
         g. Shopping;
         h. Use of money;
         i. Medication management;
         j. Socialization;
         k. Relationship building;
         l. Leisure choices;
         m. Participation in generic community activities; or
         n. Therapeutic goals;
      3. Be provided on a one-to-one (1 to 1) basis;
      4. Not be provided at a community habilitation site;
      5. Be documented by:
         a. A time and attendance record which shall include:
            i. The date of the service;
            ii. The beginning and ending time; and
            iii. The signature, date of signature and title of the individual providing the service;
         b. A detailed monthly summary note which shall include:
            i. The time, month, day and year for each note written;
            ii. The time, month, day and year for the time period the note covers;
            iii. Progress toward outcomes identified in the ISP;
      6. Be limited to sixteen (16) hours per day alone or in combination with community habilitation, supported employment and prevocational services;
   d. Occupational therapy which shall be:
      1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;
      2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;
      3. Training of other SCL providers on improving the level of functioning;
      4. Exclusive of maintenance or the prevention of regression;
      5. Provided by an occupational therapist; and
      6. Documented by a detailed staff note which shall include:
         a. Progress toward outcomes identified in the ISP;
         b. The date of the service;
         c. Beginning and ending time; and
         d. The signature, date of signature and title of the individual providing the service;
   e. Physical therapy which shall be:
      1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;
      2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;
   3. Training of another SCL provider on improving the level of functioning;
      4. Exclusive of maintenance or the prevention of regression;
      5. Provided by a physical therapist; and
      6. Documented by a detailed staff note which shall include:
         a. Progress made toward outcomes identified in the ISP;
         b. The date of the service;
         c. Beginning and ending time; and
         d. The signature, date of signature and title of the individual providing the service;
providing the service,
(f) A prevocational service which shall be:
1. Designed to prepare an SCL recipient for paid or unpaid em-
employment through activities that are not job-specific, including:
a. Supporting the SCL recipient to understand the meaning, value and demands of work;
b. Teaching social and communication skills;
c. Teaching habilitative goals;
d. Teaching work performance skills; or
e. Job seeking and maintaining skills;
2. Provided to an SCL recipient who is not expected to be able
to join the general work force within one (1) year.
3. Unavailable under a program funded by either the Rehabili-
Subtitle B, Chapter III), proof of which shall be documented in the
SCL recipient’s file;
4. Provided on a one-to-one (1 to 1) basis;
5. Documented by:
a. A time and attendance record which shall include:
(i) The date of the service;
(ii) The beginning and ending time; and
(iii) The signature, date of signature and title of the individual
providing the service;
b. A detailed monthly summary note which shall include:
(i) The time, month, day and year for each note written;
(ii) The time, month, day and year for the time period the note
covers;
(iii) Progression, regression and maintenance toward outcomes
identified in the ISP;
(iv) The signature, date of signature and title of the individual
preparing the note; and
6. Limited to forty (40) hours per week alone or in combination
with community habilitation;
7. Psychological services which shall:
(a) Be provided to an SCL recipient who is dually diagnosed to
coordinate treatment for mental illness and a psychological condi-
tion;
2. Be utilized if when the needs of the SCL recipient cannot be
met by behavior support or another covered service;
3. Include:
a. The administration of psychological testing;
b. Evaluation;
c. Diagnosis;
d. Treatment;
4. Be incorporated into the ISP with input from the psychological
service provider for the development of program-wide support;
5. Be provided by a psychologist or a psychologist with autono-
umous functioning;
6. Be documented by a detailed staff note which shall include:
a. The date of the service;
b. The beginning and ending time; and
c. The signature, date of signature and title of the individual
providing the service;
(h) Residential support service which shall:
1. Include twenty-four (24) hour supervision in:
a. A staffed residence which shall not have greater than three
(3) SCL recipients in a home rented or owned by the SCL provider;
and
b. A group home which shall be licensed in accordance with 902
KAR 20:078 and shall not have greater than three (3) SCL recipi-
ents, unless:
(i) The group home has three (3) or more SCL recipients; and
(ii) An individual residing in the group home who is not an SCL
recipient receives notification of SCL funding and desires to continue
living in the group home;
c. A family care home which shall not have greater than three
(3) SCL recipients living in the home;
and
d. An adult foster care home which shall not have greater than
three (3) SCL recipients aged eighteen (18) or over living in the
home;
2. Utilize a modular home only if the:
(a) Wheels are removed;
b. Home is anchored to a permanent foundation; and
(c) Windows are of adequate size for an adult to use as an exit in
the event of an emergency;
3. If provided via a modular home, have 180 days from the ef-
fective date of this administrative regulation to meet the modular
home requirements;
4. Not utilize a motor home;
5. Provide a sleeping room which ensures that an SCL recipient:
a. Does not share a room with an individual of the opposite sex
who is not the SCL recipient’s spouse;
b. Under the age of eighteen (18) does not share a room with an
individual that has an age variance of more than five (5) years;
c. Does not share a room with an individual who presents a
potential threat; and
d. Has a separate bed equipped with substantial springs, a
clean and comfortable mattress and clean bed linens as required for
the SCL recipient’s health and comfort;
6. Provide assistance with daily living skills which shall include:
a. Ambulation;
b. Dressing;
c. Grooming;
d. Eating;
e. Toileting;
f. Bathing;
g. Meal planning and preparation;
h. Laundry;
i. Budgeting and financial matters; or
j. Home care and cleaning;
7. Provide supports and training to obtain the outcomes of the
SCL recipient as identified in the individual support plan;
8. Provide or arrange for transportation to services, activities,
and medical appointments as needed; and
9. Include participation in medical appointments and follow-up
care as directed by the medical staff;
10. Be documented by a detailed monthly summary note which
shall include:
a. The time, month, day and year for each note written;
b. The time, month, day and year for the time period the note
covers;
c. Progression, regression and maintenance toward outcomes
identified in the ISP;
d. Pertinent information regarding the life of the SCL recipient;
and
e. The signature, date of signature, and title of the individual
preparing the staff note;
(i) Respite which shall be:
a. Provided only to an SCL recipient unable to administer self-
care;
1. Provided in a variety of settings;
c. Provided on a short-term basis due to absence or need for
relief of an individual providing care to an SCL recipient;
d. Provided only to an SCL recipient who resides in a family care
home, adult foster care home, or his or her family’s home;
e. Limited to 1440 hours per calendar year; and
f. Documented by a detailed staff note which shall include:
(i) The date of the service;
(ii) The beginning and ending time; and
(iii) The signature, date of signature and title of the individual
providing the service;
(j) Specialized medical equipment and supplies which shall:
1. Include durable and nondurable medical equipment, devices,
controls, appliances or ancillary supplies;
2. Enable an SCL recipient to increase his ability to perform
daily living activities or to perceive, control or communicate with the
environment;
3. Be ordered by a physician and submitted on a MAP-95;
4. Include equipment necessary to the proper functioning of
specialized items;
5. Not be available through the department’s durable medical
equipment, vision, hearing or dental program;
6. Meet applicable standards of manufacture, design and instal-
lation; and
7. Exclude those items which are not of direct medical or reme-
dial benefit to the SCL recipient;
(k) Speech therapy which shall be:
1. A physician-ordered evaluation of an SCL recipient with a
2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;  
3. Training of other SCL providers on improving the level of functioning;  
4. Exclusive of maintenance or the prevention of regression;  
5. Provided by a speech therapist;  
6. Documented by a detailed staffing note which shall include:  
   a. Progress toward outcomes identified in the ISP;  
   b. The date of the service;  
   c. The beginning and ending time; and  
   d. The signature, date of signature and title of the individual providing the service; and  
   (i) Support coordination which shall be:  
   1. Initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;  
   2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;  
   3. Assisting an SCL recipient and the support team to develop, update and monitor the ISP which shall:  
      a. Be initially developed within thirty (30) days of the initiation of the service; and  
      b. Be updated at least annually; and  
      c. Include the addenda to the ISP be sent to DMHMR within fourteen (14) days of the effective date the change occurs with the SCL recipient;  
   4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;  
   5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;  
   6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and any change to the selection of an SCL provider and the reason for the change;  
   7. Timely distribution of the ISP, crisis prevention plan, assessment, and other documents to the chosen SCL service providers;  
   8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a support coordination staff person;  
   9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:  
      a. Individual-specific;  
      b. Annually reviewed; and  
      c. Updated as a change occurs;  
   10. Assisting an SCL recipient in planning resource use and assuring protection of resources;  
   11. Exclusive of the provision of a direct service to an SCL recipient;  
   12. Monthly face-to-face contact with an SCL recipient;  
   13. Monitoring the health, safety and welfare of an SCL recipient;  
   14. Monitoring of the supports provided to an SCL recipient;  
   15. Documented by a monthly summary note which shall include:  
      a. Documentation of monthly contact with each chosen SCL provider;  
      b. Documentation of monthly face-to-face contact with an SCL recipient; and  
      c. Progress towards outcomes identified in the Individual Support Plan;  
   16. Provided by a support coordinator who shall have a bachelor's degree in a human service;  
   17. Supervised by a support coordination supervisor who shall be a QMHP;  
   18. A detailed monthly summary note which shall include:  
      a. The time, month, day and year for each note written;  
      b. The time, month, day and year for the time period the note covers;  
      c. Progression, regression and maintenance toward outcomes identified in the ISP; and  
      d. The signature, date of signature and title of the individual preparing the note or  
(m) Supported employment which shall be:  
1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed;  
2. Provided in a variety of settings;  
3. Provided on a one-to-one (1 to 1) basis;  
4. Unavailable under a program funded by other than the Rehabilitation Act of 1973 (29 U.S.C. Chapter 15) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;  
5. Exclusive of work performed directly for the supported employment provider;  
6. Documented by:  
   a. A time and attendance record with shall include:  
      (i) The date of service;  
      (ii) The beginning and ending time; and  
      (iii) The signature, date of signature, and title of the individual providing the service;  
   b. A detailed monthly summary note which shall include:  
      (i) The time, month, day and year for each note written;  
      (ii) The time, month, day and year for the time period the note covers;  
      (iii) Progression, regression and maintenance toward outcomes identified in the ISP; and  
   (iv) The signature, date of signature and title of the individual preparing the note; and  
6. Limited to forty (40) hours per week alone or in combination with community habilitation.  

Section 5. Incident Reporting Process. (1) An incident shall be documented on an incident report form.  
(2) There shall be three (3) classes of incidents including:  
(a) A class I incident which shall:  
   1. Be minor in nature and not create a serious consequence;  
   2. Not require an investigation by the provider agency;  
   3. Be reported to the support coordinator within twenty-four (24) hours;  
   4. Be reported to the guardian as directed by the guardian;  
   5. Be retained on file at the provider and support coordinator agency; and  
   6. Be reported to the assistant Director of the Division of Mental Retardation, DMHMR or its designee, within ten (10) calendar days of discovery if the incident involves the use of restraint or a medication error, and shall include a complete written report of the incident follow up;  
(b) A class II incident which shall:  
   1. Be serious in nature;  
   2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the support coordinator; and  
   3. Be reported by the provider agency to:  
      a. The support coordinator within twenty-four (24) hours of discovery;  
      b. The guardian within twenty-four (24) hours of discovery;  
      c. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and  
   (c) A class III incident which shall:  
   1. Be grave in nature;  
   2. Be immediately investigated by the provider agency, and the investigation shall involve the support coordinator; and  
   3. Be reported by the provider agency to:  
      a. The support coordinator within eight (8) hours of discovery;  
      b. The guardian within eight (8) hours of discovery;  
      c. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209; and  
   (d) The assistant director of the Division of Mental Retardation, DMHMR, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If the incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMH shall occur on the following business
Section 6. SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.

(2) An individual shall be placed on the SCL waiting list based upon his region of origin in accordance with KRS 205.6317(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the department a completed MAP-620, Application for MR/DD Services, which shall include a signature from a physician or a QMRP indicating medical necessity.

(4) DHMR or its designee shall validate the MAP-620 application information.

(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF/MR/DD shall be September 22, 1995 or the date of admission to the ICF/MR/DD, whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF/MR/DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(7) The order of placement on the SCL waiting list for an individual not residing in an ICF/MR/DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows:

(a) Emergency. An immediate service is needed as determined by:

1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:
   a. Loss of housing;
   b. Inappropriate hospitalization; or
   c. Inappropriate discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status;

5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS;

6. Urgent. A service is needed within one (1) year as determined by:

   1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;
   2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;
   3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver;
   4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;

(c) Future planning. A service is needed in greater than one (1) year as determined by:

1. The individual is currently receiving a service through another funding source that meets his or her needs;

2. The individual is not currently receiving a service and does not currently need the service;

3. The Individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age;

4. The individual is less than twenty-one (21) years of age;

5. If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

6. A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his legal representative and support coordination provider if identified.

7. In determining chronological status, the original date of receipt of a MAP-620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.

8. Maintenance of the SCL waiting list shall occur as follows:

(a) During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone or in person for validation to determine category of need;

(b) Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region and the department shall, at a minimum, annually update the waiting list during the birth month of an individual. The individual or his or her legal representative and support coordination provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and its continued desire to pursue placement in the SCL program. The requested data shall be received by the department within thirty (30) days from the date of the letter.

(c) Reassignment of category of need shall be completed based on the updated information and validation process.

(d) An individual or his or her legal representative may submit a written request for consideration of a change in the individual's category of need at any time if there is a change in the status of the individual.

(e) If an individual on the SCL waiting list in the emergency category of need is placed in an ICF/MR/DD, the category of need shall not change.

(f) The criteria for removal from the SCL waiting list shall be:

   (a) A signed statement by the individual or the legal representative;
   b. Copies of letters to providers;
   c. Copies of letters from providers.

(g) Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

   a. Sixty (60) days for an individual who does not reside in a facility; or
   b. The length of the transition plan, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:

(a) The individual shall be moved to the future planning category;

(b) The chronological date shall remain the same.

(17) If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the SCL coordination provider.

(18) If an individual is removed from the SCL waiting list shall not prevent the submission of a new application at a later date.

(19) The SCL waiting list, excluding the emergency category, shall be fixed as it exists ninety (90) days prior to the expected date of offering a placement based upon the allocation of new funding and shall be resumed following the allocation of new funding.

(20) A placement shall be allocated potential funding based upon:

(a) His or her region of origin in accordance with KRS 205.6317(3) and (4);

(b) His or her category of need;

(c) His or her chronological date of placement on the SCL waiting list.

(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:

(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or his or her legal representative.
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Section 7. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) An individual shall not appeal a category of need specified in Section 6 of this administrative regulation. (Supports for community living (SCL)—means community-based waiver services for an individual with mental retardation or developmental disabilities (1), “Wellness monitoring” means a process in which a registered nurse:

(a) Evaluates the level of wellness of a recipient to determine if;
1. The recipient is properly using the medical health services being provided; and
2. The health of the recipient is sufficient to maintain him in his place of residence without more frequent skilled nursing intervention and
(b) Does not provide direct treatment to the recipient.

Section 2. General-Coverage-Provisions. (1) Except as provided in subsection (2) of this section, SCL services shall be provided to an individual eligible for Medicaid:
(a) Who meets patient status criteria for intermediate care for the mentally retarded in accordance with 007 KAR 1:002;
(b) Who is in a community residence, living situation, and
(c) For whom SCL services are an appropriate alternative to institutionalization.

(2) SCL services shall not be provided to an individual who:
(a) Is an inpatient of a hospital;
(b) Is a resident of a nursing facility;
(c) Is an inpatient of a facility for the mentally retarded;
(d) Is an inpatient of a facility identified in subsection (2) of this section;
(e) May apply for an SCL service while the individual is an inpatient or resident of the identified facility;
(f) Shall not receive the service while the individual is an inpatient or resident of the identified facility.

(3) The department may exclude from coverage an individual for whom the cost of SCL services exceeds the cost of the appropriate facility or institutional service, as provided for in 42 U.S.C. 1396n(e)(3).

(4) The service agency shall provide one (1) or more of the services as outlined in Section 4 of this administrative regulation.

(a) The federally designated Peer Review Organization (PRO) shall make the level of care determination as the agent of the department.

Section 3. Provider Participation. (1) A participating SCL service provider shall meet the applicable certification requirements for providing community-based waiver services in accordance with 907 KAR 1:674, 907 KAR 1:675, and 907 KAR 1:675.

(2) Group homes shall be licensed by the Commonwealth of Kentucky in accordance with 002 KAR 20:070.

Section 4. Covered Services. (1) The following shall be covered SCL services:
(a) Residential support services provided to an individual residing in an alternative living arrangement, which shall be a
1. Group home;
2. Staffed residence; or
3. Family home;
(b) Support coordination as follows:
1. Initial and ongoing monitoring of admission, assessment, and eligibility processes;
2. Development and monitoring of an individual support plan;
3. Ensuring access to and freedom of choice of SCL providers;
4. Monitoring of the health, safety, and welfare of the individual by a support coordinator;
5. Ensuring the availability of a waiver service;
6. Providing pertinent information to an individual, parent, or legal representative;
7. Establishing and overseeing a human rights committee for the review of overall procedures and individual behavior plans;
8. Acting on behalf of the individual to assist in gaining access to and receiving services from qualified SCL providers;
9. Providing assistance to the individual, his family, or legal representative in accessing another service as needed;
10. Community living supports provided to an individual in his home and not in an alternative living arrangement as identified in paragraph (a) of this subsection to assist in or support in activities including:
1. Laundry services;
2. Meal preparation;
3. Household care or maintenance;
4. Daily living skills;
5. Socialization;
6. Relationship building;
7. Leisure choices;
8. Participation in community activities;
9. Behavioral support;
10. Psychological services;
11. Occupational therapy;
12. Physical therapy;
13. Speech therapy;
14. Community habilitation services to provide nonresidential support training and intervention in activities that include:
1. Self-care;
2. Daily living skills;
3. Communication;
4. Behavior support;
5. Community living;
6. Social skills;
7. Participation in community activities;
8. Utilization of community resources;
9. Vocational training;
10. Supported employment for a participating individual if the services are not otherwise available under a program funded by 20 U.S.C. 701 et seq. or Pub.L. 91-112;
11. Respite care provided for the temporary relief of the staff or family or for the safety of the individual;
12. Wellness monitoring providing one (1) visit per month by a registered nurse to:
1. Evaluate the condition of an individual in a risk of medical complications; or
2. Refer the individual to the appropriate medical services;
3. Specialized medical equipment and supplies; or
4. Personal emergency response systems;
5. Room and board shall be excluded from coverage;
6. Special education and related services as required to be provided by the public school system under 20 U.S.C. 1400 et seq. shall be excluded from coverage.

Section 5. Prior Authorization for Services. (1) The department shall prior authorize an SCL service to ensure that:
(a) Eligible status is met;
(b) There are adequate services for the needs of the individual;
(c) The services do not exceed the cost of the appropriate level of institutional care.

(2) An individual who is eligible for SCL services shall be given the choice of SCL services or traditional intermediate care facility services for persons with mental retardation or developmental disabilities.

Section 6. SCL Waiting List. Using the procedures established in the Department for Medicaid Services: Supports for Community Living Manual, which is incorporated by reference, an individual may be placed on a waiting list maintained by the department. The main components of the SCL waiting list process shall be as follows:
(1) Application. An individual shall be placed on the SCL waiting list upon receipt of a completed application for support for community living services.
(2) SCL waiting list placement.
   (a) The order of placement on the SCL waiting list shall be determined chronologically by date of receipt of the application by the department, unless an emergency situation exists which meets specified criteria as follows:
   1. Death or loss of the immediate care provider;
   2. Emergency hospitalization of the immediate care provider; or
   3. Other circumstances relating to the situation of the individual or caregiver to be considered by the department on a case-by-case basis.
   (b) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list.
   (c) Written notification of the date and placement on the SCL waiting list shall be mailed to the individual or his legal representative and the support coordination provider if identified.
   (d) Maintenance of the SCL waiting list. The department shall, at least annually, update the SCL waiting list. The individual or his legal representative and the support coordination provider shall be contacted in writing to verify the accuracy of the date on the SCL waiting list and the continued desire to pursue placement in the SCL Program. The requested data shall be received by the department within thirty (30) days from the date of the letter, excluding holidays and weekends.
   (4) Criteria for removal from the SCL waiting list. The removal from the waiting list shall not prevent the submittal of a new application at a later date for the individual.
   (a) The criteria for removal from the waiting list shall be:
   1. A documented attempt by the department is unable to locate the individual or his legal representative;
   2. If SCL placement for services is offered and the individual or his legal representative refuses the offer of placement or does not, without good cause, complete the application process with the department within sixty (60) days of the placement allocation date, or
   3. The individual is deceased.
   (b) If the individual is removed from the SCL waiting list, written notification shall be mailed to the individual or his legal representative and the SCL coordination provider.
   Section 7. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with KARS 1-653.
   (2) A decision to terminate an individual from or to reallocate placement subject to appeal shall not be final until an order is issued in accordance with KARS 1-653.

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

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: July 16, 2007
FILED WITH LRC: July 22, 2003 at 1 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Teresa Goodrich (564-6204)
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes supports for community living (SCL) covered services, coverage provisions, and provider qualifications.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish SCL covered services, coverage provisions, and provider qualifications.
   (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 SCL covered services, coverage provisions, and provider qualifications.
   (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 SCL covered services, coverage provisions, and provider qualifications.
(2) If 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 mandates that providers ensure that each staff person, prior to providing direct care, has tested negative for tuberculosis within the past 12 months, requires providers to maintain documentation of tuberculosis test results, and reduces the provider administrative burden regarding occupational therapy, physical therapy, psychological services and speech therapy.
   (b) How the necessity of the amendment to this administrative regulation:
The Cabinet for Health Services discovered that SCL service provider staff who tested positive for tuberculosis have been providing direct care; therefore, the amendment to this administrative regulation is necessary to protect the health, safety and welfare of SCL recipients. In addition the reducing of the provider administrative burden is necessary to enable providers to more efficiently meet recipient needs.
   (c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by mandating that providers ensure that each staff person, prior to providing direct care, has tested negative for tuberculosis within the past 12 months and by requiring providers to maintain documentation of employee tuberculosis test results in order to protect the health and welfare of recipients. The amendment also conforms to the content of authorizing statutes by reducing the provider administrative burden regarding occupational therapy, physical therapy, psychological services and speech therapy to enable them to more efficiently meet recipient needs.
   (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by mandating that providers ensure that each staff person, prior to providing direct care, has tested negative for tuberculosis within the past 12 months and by requiring providers to maintain documentation of employee tuberculosis test results in order to protect the health and welfare of recipients. The amendment also conforms to the content of authorizing statutes by reducing the provider administrative burden regarding occupational therapy, physical therapy, psychological services and speech therapy to enable them to more efficiently meet recipient needs.
   (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The entities affected include approximately 106 certified SCL providers and 1,872 SCL recipients.
   (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation is enacted to protect the health, safety and welfare of SCL recipients by ensuring that SCL provider staff, prior to providing direct care, are tested negatively for tuberculosis within the past 12 months. Additionally it mandates that tuberculosis test results be maintained for each staff person and also reduces the provider administrative burden to enable them to more efficiently meet recipient needs.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. It establishes policy regarding tuberculosis testing and reduces the provider administrative burden in other areas and is not expected to have a fiscal impact on the Department for Medicaid Services.
   (b) On a continuing basis: This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. It establishes policy regarding tuberculosis testing
and reduces the provider administrative burden in other areas and is not expected to have a fiscal impact on the Department for Medicaid Services.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. SCL reimbursement is established in 907 KAR 1:155. Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are the funding sources to be used to implement and enforce 907 KAR 1:155.

(7) Provide an assessment of whether an 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not establish any fees, nor will it directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq.

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services supports for community living (SCL) covered services, coverage provisions, and provider qualifications.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the Department for Medicaid Services SCL covered services, coverage provisions, and provider qualifications in accordance with federal regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not impose stricter (than federal) requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter (than federal) requirements are not imposed by this administrative regulation.
Section 2. Pharmacy Administration. (1) General. The pharmacy, organized as a separate department or service, shall be directed by a professionally competent, legally qualified pharmacist. The director of pharmacy services shall be [be] responsible for departmental management and the development and implementation of goals and objectives to meet the needs of the institution.

(2) Director of pharmacy.

(a) The director of pharmacy services shall be thoroughly knowledgeable about institutional [hospital] pharmacy practice and management.

(b) If [when] the director of pharmacy services is not employed full time, the institution [hospital] shall establish an ongoing arrangement in writing with an appropriately qualified pharmacist to provide [the] services required by this administrative regulation and KRS 315.025(1) [described herein]. The director of pharmacy services shall be responsible to the chief executive officer of the institution [hospital] or his designee.

(c) If a [when the] hospital pharmacy is decentralized, each decentralized section or separate organizational element shall be under the immediate supervision of a pharmacist responsible to the director.

(3) Pharmacy personnel.

(a) The institutional pharmacy [Department of Pharmacy Services] shall maintain additional pharmacists in cooperation with the institution [hospital] administration, either full time or part time, as they are required to operate safely and effectively to meet the needs of the patients.

(b) Nonpharmacist personnel are employed, they shall perform all duties under the supervision of a pharmacist and they shall not be assigned, nor shall they perform, duties that are to be performed only by pharmacists.

(4) Responsibilities.

(a) Lines of authority and areas of responsibility within the pharmacy shall be clearly defined. Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.

(b) There shall be policies and procedures to provide for selection of drugs as well as a distribution system to serve the needs of the patient. Provision for procurement of drugs in an emergency situation shall be provided for.

(c) Supportive personnel.

(a) Sufficient supportive personnel (technical, clerical, and other) shall be available in order to optimize the participation of pharmacists in activities requiring professional judgment.

(b) The training and supervision of supportive personnel shall be the responsibility of the pharmacist.

(6) Availability.

(a) The services of a pharmacist shall be available at all times. However, if [when] around-the-clock operation of the pharmacy is not feasible, the pharmacist shall be available on an on-call basis and a resident night nurse shall be established. The pharmacy itself shall not be designated as the night drug cabinet.

(b) Hospitals not having a full-time pharmacist, but in which drugs are packaged or rebatched or transferred from one container to another, shall obtain a pharmacy permit and have at least a part-time pharmacist designated to perform those functions or to provide personal supervision of those functions.

Section 3. Physical Facility. (1) The institutional pharmacy [Department of Pharmacy Services] shall have adequate space, equipment, and supplies sufficient to provide for safe and efficient drug storage, preparation, and distribution, patient education and consultation, drug information services, and proper management of the department.

(2) Legal requirements. The physical facility shall meet state and federal regulations and shall be accessible by key only.
pharmacy personnel only.

(3)(a) A currently licensed hospital shall be [exempt from the provisions of subsection (2) of this section if it:
1. Is authorized by the Department for Health and Human Serv-
ices to provide pharmacy services; and
2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section shall [may] permit access by author-
nized personnel only.

(4) Location. Locked storage or locked medication carts shall be provided for use in each nursing unit or service area.

(5) Reference materials. The pharmacy shall have current pharmaceutical reference materials in accordance with 201 KAR 2:090 [state administrative regulations]. References related to the following subjects shall also be available:
(a) Drug identification;
(b) Toxicology;
(c) Drug interactions;
(d) Parenteral drug compatibility; and
(e) Microbiology.

Section 4. Drug Distribution and Control. (1) General. The institutional pharmacy [department of pharmacy services] shall be responsible for the procurement, distribution and control of all drugs and pharmaceuticals used within the institution. Policies and procedures governing these functions shall be developed by the pharmacist in consultation with other involved hospital or other organized health care facility staff (e.g., nurses) and committees (e.g., pharmacy and therapeutics committee and patient care committee).

(2) Dispensing. The pharmacist shall dispense medications only on the order of a licensed practitioner.

(3) Prescriber's order. The pharmacist shall review the medication order within [specified] a reasonable amount of time.

(4) Recordkeeping. The pharmacist shall maintain appropriate records of each medication order. These records shall be retained for the time and in the manner prescribed by state and federal law.

(5) Patient medication profile. A medication profile shall be maintained for all inpatients and for those ambulatory patients routinely receiving care at the institution. The pharmacist shall utilize this profile to properly review, schedule, prepare, and distribute medications except in emergency situations.

(6) Labeling and packaging.
(a) All licensees shall comply with U.S.P. Standards established pursuant to federal law and all state and federal laws and regulations regarding labeling and packaging.
(b) Labeling and packaging of medications used for outpatients shall meet the requirements of state and federal law.

(7) Dispensing. The pharmacist shall dispense medications by the unit dose distribution system if [unless] feasible. If [unless] the unit dose distribution system is not utilized, adequate safeguards shall be in place to protect patients.

(8) Stop orders. There shall be established written stop order policies or other methods of assuring that drug orders are not continued inappropriately in accordance with the status of the patient.

(9) Administration. Drugs shall be administered only upon order of a licensed practitioner. The institutional pharmacy [department] shall participate in the development of policies and procedures regarding the administration of medications. Specific procedures shall be developed in cooperation with appropriate hospital or other health care facility personnel regarding and shall include [but not limited to] personnel authorized to schedule, prepare and administer medications.

(10) Unused medication. The institutional pharmacy [department] shall establish policies and procedures for the disposition of patients' unused medications. Medication in unit dose form may be reissued if package integrity has been maintained and the product is still in date.

(11) Hospital floor stocks.
(a) Floor stocks of drugs shall be kept as small as possible. The pharmacist in charge shall be responsible for authenticating the need for floor stock.
(b) A pharmacist shall review all orders distributed through floor stock within a reasonable amount of time.
(c) The pharmacist in charge shall be responsible for defining those areas of the hospital requiring floor stock (e.g., emergency room, surgery, critical care, or medical or surgical [medical/surgical] wards).

(d) All drug storage areas within the hospital shall be routinely inspected by pharmacy personnel at least monthly and documentation maintained to assure that no unusable items are present and that all stock items are properly labeled and stored.

(e) This subsection shall [does not] apply to other organized health care facilities.

(12) Drug recall. There shall be a system for removing from use any drugs subjected to a recall.

(13) Sample medications. The institutional pharmacy [department] shall establish policies and procedures regarding medical representatives and the obtaining, storage, and dispensing of complimentary packages of medications.

(14) Emergency drugs.
(a) The institutional pharmacy [department] shall establish policies and procedures for supplying emergency drugs.
(b) For expediency and efficiency, emergency drugs shall be limited in number to include only those whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of sudden and unforeseen patient emergencies.

(c) Emergency stocks shall be routinely inspected by pharmacy personnel on a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(15) Investigational drugs.
(a) Policies and procedures controlling the use of investigational drugs (if used in the institution) shall be developed and followed.
(b) The pharmacy shall be responsible for storing, packaging, labeling, distributing, maintaining inventory records (including lot numbers and expiration date) and providing information about investigational drugs (including proper disposal).

(16) Controlled substances. All permit holders shall comply with state and federal laws regarding controlled substances.

Section 5. Assuring Rational Drug Therapy. (1) Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in his daily practice activities.

(2) The pharmacist shall be a member of the pharmacy and therapeutics committee and any other committees where input concerning the use of drugs is required.

(3) The pharmacist shall provide a means to assure that patients receive adequate information about the drugs they receive. This is particularly important for ambulant and discharged patients. Patient education activities shall be in coordination with the nursing and medical staffs and patient education department, if any.

[Section 6. Penalty. Violation of any provision of this adminis-
tration regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.]

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GEORGINA JONES, President
APPROVED BY AGENCY: May 21, 2003
FILED WITH LRC: May 21, 2003 at 4 p.m.

BOARD OF NURSING
(As Amended at ARRS, August 7, 2003)

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(e), 314.111(1), 314.131(1), (2)
STANATORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) requires that an applicant for licensure as a registr-
ered nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing 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 precensure registered nurse programs. To assure that an educational program will meet standards and provide the necessary education for licensure as a registered nurse, such standards shall reflect the philosophy, purposes, objectives, and conceptual or organizing framework of the program of nursing which shall be consistent with the law governing the practice of nursing.

Section 1. Definitions. (a) [Curriculum Leading to Eligibility for Licensure as a Registered Nurse, (1) Types of programs of nursing. Two (2) types of programs prepare graduates for eligibility to be admitted to the licensure examination for registered nurses.

(a) "Associate degree program" means a program of nursing organized and administered by a community college, or a four (4) year college or university which awards the graduate an associate degree in nursing upon meeting the requirements of the governing institution.

(b) "Baccalaureate degree program" means a program of nursing organized and administered by a senior college or university upon which awards the graduate a baccalaureate degree in nursing upon meeting the requirements of the governing institution.

Section 2. General. (a) Pursuant to KRS 314.041(1)(a), an applicant for licensure as a registered nurse shall complete an associate degree program or a baccalaureate degree program that meets the requirements of this administrative regulation.

(b) Length. A registered nurse program shall be a minimum of two (2) academic years.

(c) Philosophy and objectives.

(a) The philosophy and objectives 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 objectives shall describe the expected competencies of the graduate.

(c) Approval.

(a) A [bi] curriculum plan shall not be implemented unless approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall include supporting evidence that students will be able to acquire the nursing skills essential for safe practice upon graduation.

(c) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, and organizing framework, which describes the organization and development of the curriculum.

(b) The curriculum design shall reflect the philosophy and objectives of the program.

(c) There shall be a rationale for the credit allocated to course and clinical practice experience.

(d) Credits allocated to course and clinical practice experience shall be clearly identified.

(e) A copy of each course outline, including objectives, planned instruction, learning activities, and method of evaluation shall be on file in the program office.

(f) Curriculum components.

(a) The curriculum shall include:

1. Areas of biological, physical and psychosocial sciences;
2. Areas of nursing science and practice; and
3. An integrated practicum as required by [described in] subsection (8) of this section.

(b) The curriculum shall include theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life cycle.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program objectives.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

(e) Curriculum change.

(a) Any substantive change in the philosophy, objectives, conceptual or organizing framework, or the curriculum plan (including the addition or deletion of major content areas) shall be submitted to the board for approval before implementation, unless the program of nursing is accredited by the National League for Nursing Accrediting Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE).

(b) An accredited program of nursing shall submit to the board a copy of the curriculum revision approved by the accrediting agency within thirty (30) days of the approval.

(c) 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 during the last semester or quarter of a nursing program.

(c) All precensure nursing programs shall implement the integrated practicum requirement into their curriculum for students entering the program on or after July 1, 2004.

JAN RIDDLE, President
APPROVED BY AGENCY: April 4, 2003
FILED WITH LRC: June 6, 2003 at 11 a.m.

BOARD OF NURSING
(As Amended at ARRS, August 7, 2003)


RELATES TO: KRS 314.011(9), 314.021, 314.051(1)(b), 314.111(1), 314.131(1), (2)

STUTATORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

Necessity, function, and conformity: KRS 314.051(1)(b) requires that an applicant for licensure as a licensed practical nurse complete the required educational program in practical nursing at an approved school of nursing. KRS 314.111(1) requires that schools of nursing meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the Board of Nursing to promulgate necessary administrative regulations to approve programs of nursing. This administrative regulation establishes the curriculum requirements for precensure practical nurse programs. To assure that an educational program will meet standards and provide the necessary education for licensure as a practical nurse, such standards shall reflect the philosophy, purposes, objectives, and conceptual or organizing framework of the program of nursing which shall be consistent with the law governing the practice of nursing.

Section 1. Definition. [Curriculum Leading to Eligibility for Licensure as a Practical Nurse, (1) One type of program prepares graduates for eligibility to be admitted to the licensure examination for practical nurses.

(a) Practicual nursing program" means a program of nursing organized and administered by a vocational, technical or [ana] adult education system or an independent school at a postsecondary level, which awards the graduate a diploma in practical nursing upon meeting requirements of the program.

Section 2. General. (a) Pursuant to KRS 314.051(1)(b), an applicant for licensure as a licensed practical nurse shall complete a practical nursing program that meets the requirements of this administrative regulation.

(b) Approval.

(a) A [bi] curriculum plan shall not be implemented unless approved by the board in accordance with this administrative regulation.

(b) A curriculum plan shall include supporting evidence that students will be able to acquire basic nursing skills essential for safe practice upon graduation.

(c) Length. The program of nursing shall be a minimum of nine (9) months.

(d) The philosophy and objectives of the program of nursing...
shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.
(5) [60] The program of nursing objectives shall describe the expected competencies of the graduate.
(6) [47] There shall be a written plan describing the organizational framework and development of the curriculum.
(7) [48] The curriculum shall reflect the philosophy and objectives of the program.
(8) [59] The curriculum plan shall show the placement of courses according to term and level, and the relationship of course content to the clinical practice experience.
(9) [46] A copy of each course outline, including objectives, planned instruction, learning activities, and methods of evaluation shall be on file in the program office.
(10) [44] The amount of time allotted to class content and clinical practice shall be identified.

(11) [42] The curriculum shall include:
(a) Subject matter from the biological and social sciences; human body structure and function, growth and development, and normal nutrition; [6]
(b) Area of personal and vocational relationships; [6]
(c) Area of nursing content; [6]
   1. The curriculum shall address content with selected clinical practice experience in meeting basic nursing needs throughout the life cycle; [6]
   2. Clinical practice settings shall be appropriate for the practical nurse program and the program objectives; and [6]
   3. Written plans for clinical practice experience shall be submitted to the board for approval before implementation; and [6]
(d) An integrated practicum as required by [6]
   subsection (3) [44] of this section.
(12) [43] Curriculum change.
(a) Any substantive change in the philosophy, objectives, conceptual or organizing framework, or the curriculum plan (including the addition or deletion of major content areas) shall be submitted to the board for approval before implementation, unless the program of nursing is accredited by the National League for Nursing Accrediting Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE).
(b) An accredited program of nursing shall submit to the board a copy of the curriculum revision approved by the accrediting agency within thirty (30) days of the approval.
(13) [44] 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 during the last semester or quarter of a nursing program.
(14) [45] All prelicensure nursing programs shall implement the integrated practicum requirement into their curriculum for students entering the program on or after July 1, 2004.

JAN RIDDER, President
APPROVED BY AGENCY: April 4, 2003
FILED WITH LRC: June 6, 2003 at 11 a.m.

FINANCE AND ADMINISTRATION CABINET
State Board for Proprietary Education
(As Amended at ARRS, August 7, 2003)

201 KAR 40:040. Commercial driver license training school curriculum.

RELATED TO: KRS 165A.330(1), 165A.370, 165A.460(1)
[465A.460-165A.515]
STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460(1) [465A.460-165A.515] mandates that the Kentucky State Police and the State Board for Proprietary Education establish a curriculum for commercial driver license training schools in consultation with the Kentucky Community and Technical College System. This administrative regulation establishes the curriculum regarding standards for commercial driver license training schools.


Section 2. A commercial driver license training school shall:
(1) Mandate that the student successfully completes an independent study program approved by the Professional Truck Driver Institute of America, Inc., before taking the skills examination to obtain a commercial driver license;
(2) Maintain the student's completed independent study program; and
(3) Score in the student's school record.

Section 3. A commercial driver license training school may offer a refresher course for persons with at least one (1) year, verifiable commercial driving experience, and shall maintain records of all persons taking the refresher course. The commercial driver license training school shall:
(1) Assess the person's qualifications and skill level to determine the appropriate curriculum as contained in the "Kentucky Commercial Driver License, Official Guidelines and Curriculum";
(2) Mandate that before a student of a commercial driver license training school licensed by the board completes the refresher course, that the person shall successfully complete an independent study program approved by the Professional Truck Driver Institute of America, Inc.;
(3) Maintain the student's completed independent study program and score in the student's school record.

Section 4. A commercial driver license training school shall comply with drug testing of students in accordance [accord] with the United States Department of Transportation, Federal Motor Carrier Safety Administration Rule 49 C.F.R. 382.

Section 5. Incorporation by Reference, (1) [The following material is incorporated by reference:] "Kentucky Commercial Driver License, Official Guidelines and Curriculum", August 2002 edition, developed by the Kentucky State Police and the Kentucky Community and Technical College System as mandated by KRS 165A.460(1) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HARRY BECK, Ed.D., Chair
APPROVED BY AGENCY: June 13, 2003
FILED WITH LRC: June 13, 2003 at 11 a.m.

FINANCE AND ADMINISTRATION CABINET
State Board for Proprietary Education
(As Amended at ARRS, August 7, 2003)

201 KAR 40:050. Application for license for commercial driver license training school.

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460-165A.515 mandates that the State Board for Proprietary Education establish an application procedure for commercial driver license training schools. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school
Section 2. Application for Non-Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner or owners [school owner(s)] shall:

(a) Submit to the board a completed original and one (1) copy of the Application to Operate a Non-Kentucky Resident Commercial Driver License Training School with supporting documentation, incorporated by reference;

(b) Pay the nonrefundable application fee of $200 established in [accord with] KRS 165A.475(2);

(c) Pay the nonrefundable initial licensure fee of $300;

(d) Pay the nonrefundable contribution to the Student Protection Fund of $300;

(e) Meet the requirements of Sections 3 through 5 of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer."

Section 3. State and National Criminal History Background Checks. (1) Any person, firm, partnership, association, educational institution, establishment, agency, organization, officers of a corporation, school director, commercial driver license instructor or agent that offers commercial driver license driver training shall undergo a state and national criminal history background check at the time of application to operate a school, and submit to being fingerprinted by the Kentucky State Police, on the fingerprint card supplied by the board with the Application to Operate a Kentucky Resident Commercial Driver License Training School or the Application to Operate a Non-Kentucky Resident Commercial Driver License Training School.

(2) Each fingerprint card submitted to the board shall be accompanied by a nonrefundable fee of thirty-four (34) dollars, payable by certified check or money order to the Kentucky State Treasurer.

Section 4. Evidence of Liability Insurance Coverage. Each applicant to operate a commercial driver license training school shall be accompanied by:

(1) Evidence of liability insurance coverage for the commercial driver license training school, the instructors [instructor(s)], and students while operating driver training school equipment with liability insurance coverage as mandated by KRS 165A.475(1)(d);

(2) Verification of liability insurance coverage from its insurance company of the insurance policy to include a complete listing of all equipment, serial numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the board in writing within thirty (30) days of the subsequent change.

Section 5. Inspection and Investigation of Commercial Driver License Training School and Equipment. By memorandum of agreement with the board, the Kentucky State Police shall:

(1) Inspect each Kentucky resident commercial driver license training school facility and equipment which shall be recorded on forms provided by the Kentucky State Police and which forms shall be filed with the board.

(2) Investigate the commercial driver license training school and verify the contents of its application for licensure on forms provided by the Kentucky State Police and which forms shall be filed with the board.

Section 6. Denial of Application. (1) The board shall deny an application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with the administrative regulations governing the application and operation of a commercial driver license training school.

(c) Failure to comply with KRS 165A.470(1)-(4) regarding persons connected in any capacity [whatevers] with commercial driver license training schools.

(2) The board may deny an application to operate a commercial driver license training school for lack of good moral character as mandated by KRS 165A.475(1)(b).

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

(a) "Application to Operate a Commercial Driver License Training School", August 2002 edition.

(b) "Application to Operate a Non-Kentucky resident Commercial Driver License Training School", August 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HARRY BECK, Ed.D., Chair
APPROVED BY AGENCY: June 13, 2003
FILED WITH LRC: June 13, 2003 at 11 a.m.

FINANCE AND ADMINISTRATION CABINET
State Board for Proprietary Education
(As Amended at ARRS, August 7, 2003)

201 KAR 40:060. Application for renewal of license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.485
[165A.460-165A.515]
STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510
[165A.330(1), 165A.370, 165A.460-165A.515]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.485
[165A.460-165A.515] mandates that the State Board for Proprietary Education establish an application for license renewal of [at] commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky Resident Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed Kentucky resident commercial driver license training school shall:

(a) Submit to the board a completed original and one (1) copy of the Renewal application to Operate a Commercial Driver License Training School with supporting documentation [incorporated by reference];

(b) Pay the nonrefundable renewal application fee of $200 established in [accord with] KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of:

1. $300 for licensed commercial driver license training schools for net tuition up to and including $50,000; and

2. An additional fifteen (15) dollars for each $10,000 in net tuition thereafter, not to exceed a total renewal fee of $2,000;

(d) Meet the requirements of Sections 3 through 5 of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer."

Section 2. Renewal Application for Non-Kentucky Resident Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed non-Kentucky resident commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky shall:
(a) Submit to the board a completed original and one (1) copy of the Renewal Application to Operate a Commercial Driver License Training School with supporting documentation [incorporated by reference];

(b) Pay the nonrefundable renewal application fee of $200 established in [accord with] KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of $900; and

(d) Meet the requirements of Sections 3 and 4 of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 3. [State and National Criminal History Background Checks. Any person, firm, partnership, association, educational institution, establishment, agency, organization, officer of a corporation, school director, commercial driver license instructor or agent that offers commercial driver license training shall undergo a state and national criminal history background check at the time of renewal to operate a school, and submit to being fingerprinted by the Kentucky State Police on the fingerprint card supplied by the board. If the board, on the Application to Operate, each fingerprint card submitted to the board shall be accompanied by a nonrefundable fee of thirty-four (34) dollars, payable by certified check or money order to the 'Kentucky State Treasurer'.

Section 4. [Evidence of Liability Insurance Coverage. Each renewal application to operate a commercial driver license training school shall be accompanied by:

(1) Evidence of liability insurance coverage for the commercial driver license training school, the instructors [instructors], and students while operating driver training school equipment with liability insurance coverage as mandated by KRS 165A.475(1)(d);

(2) Verification of liability insurance coverage from its insurance company of the insurance policy to include a complete listing of all equipment, serial numbers, and vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the board in writing within thirty (30) days of the subsequent change.

Section 5. [Inspection and Investigation of Commercial Driver License Training School and Equipment. By memorandum of agreement with the board, the Kentucky State Police shall:

(1) Inspect each Kentucky resident commercial driver license training school including facility and equipment on forms provided by the Kentucky State Police and which forms shall be filed with the board;

(2) Investigate the commercial driver license training school and verify the contents of its renewal application for licensure on forms provided by the Kentucky State Police and which forms shall be filed with the board.

Section 6. [Denial of Renewal Application. The board shall deny a renewal application to operate a commercial driver license training school for:

(1) Failure to comply with the requirements of KRS 165A.460-165A.515;

(2) Failure to comply with the administrative regulations governing the application and operation of a commercial driver license training school;

(3) Failure to comply with KRS 165A.475(1)(d) regarding persons connected in any capacity [whateoever] with commercial driver license training schools.

(2) The board may deny a renewal application to operate a commercial driver license training school for lack of good moral character.

Section 6. [Incorporation by Reference. The following material is incorporated by reference:

(a) "Renewal Application to Operate a Commercial Driver License Training School", August 2002 edition; and

(b) "Renewal Application to Operate a Non-Kentucky Resident Commercial Driver License Training School", August 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Edu-
cation, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HARRY BECK, Ed.D., Chair
APPROVED BY AGENCY: June 13, 2003
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FINANCE AND ADMINISTRATION CABINET
State Board for Proprietary Education
(As Amended at ARRS, August 7, 2003)

201 KAR 40:070. Commercial driver license training school instructor and agent application and renewal procedures.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.490-515 mandates that the State Board for Proprietary Education establish standards for instructors and agents of commercial driver li-
censing schools including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents including application and renewal procedures regarding commercial driver license training schools.

Section 1. Application for Commercial Driver License Training School Instructor and Agent. An applicant for a commercial driver license training school instructor or agent shall:

(1) Submit a completed original Application for a Commercial Driver License Training School Instructor [incorporated by re-

(2) Submit two (2) recent photographs no larger than two (2) inches by two (2) inches;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in [accord with] KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of $150;

(5) Successfully complete the written examination and skills examination administered by the Kentucky State Police; and

(6) Meet the standards of Section 2 of this administrative regu-

Section 2. State and National Criminal History Background Checks. An applicant for a commercial driver license instructor or agent shall undergo a state and national criminal history background check at the time of application and submit to being fingerprinted by the Kentucky State Police, on the fingerprint card supplied by the board.

(2) Each fingerprint card submitted to the board shall be accom-

Section 3. Application for Renewal of Commercial Driver Li-
cense Training School Instructor or Agent. On or before May 15 of each year, a licensed commercial driver license training school in-

(1) Submit a completed original Renewal Application for a Commercial Driver License Training School Instructor [incorporated by re-

(2) Submit two (2) recent photographs no larger than two (2) inches by two (2) inches;

(3) Pay the nonrefundable renewal application fee of twenty (20) dollars established in [accord with] KRS 165A.475(6); and

(4) Pay the nonrefundable renewal initial licensure fee of $150;

(5) Meet the standards of Section 2 of this administrative regu-

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Section 4. All fees required by this administrative regulation shall be submitted by certified check or money order payable to the "Kentucky State Treasurer."

Section 5. (1) The following material is incorporated by reference:
(a) "Application for Commercial Driver License Training School Instructor" PE 0008, August 2002 edition;
(b) "Renewal Application for Commercial Driver License Training School Instructor" PE 0009, August 2002 edition;
(c) "Application for Commercial Driver License Training School Agent" PE 0010, August 2002 edition;
(d) "Renewal Application for Commercial Driver License Training School Agent" PE 0011, August 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HARRY BECK, Ed.D., Chair
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FINANCE AND ADMINISTRATION CABINET
State Board for Proprietary Education
(As Amended at ARRS, August 7, 2003)

201 KAR 40:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.500 and 165A.510 authorize [165A.465-165A.515 mandates that] the State Board for Proprietary Education to establish the standards for maintenance of student records, schedule of fees charged to students and refund policy, contracts and agreements involving licensed commercial driver license training schools, advertising and solicitation of students by commercial driver license training schools. This administrative regulation establishes these standards for commercial driver license training schools.

Section 1. Maintenance of Student Records and Student Roster. (1)(a) Each licensed commercial driver license training school shall maintain a permanent record of instruction given to each student to include the student transcripts, student written examination results, and student skills examination scores for so long as the commercial driver license training school holds a license or conducts business.

(b) If the commercial driver license training school discontinues operation, then the school shall comply with KRS 165A.390(5).

(2) The records to be maintained by the commercial driver license training school shall contain the following:
(a) Name and address of the commercial driver license training school;
(b) Name and address of the student;
(c) The number of the student's instruction permit;
(d) The number of the student's drivers license;
(e) The type and date of instruction given, whether classroom and/or behind-the-wheel;
(f) The printed name and signature of the instructor;
(g) Student's completed enrollment application;
(h) Student's completed student contract or [g] enrollment agreement, including the student's signature and authorized school official's signature properly dated;
(i) Financial documents signed by the student including the student's completed loan agreement and accurate record of all fees paid to the school and government agencies;
(j) Student's attendance record;
(k) Student's progress report;
(l) Student's transcript including all grades received during course of instruction;
(m) Student's completed independent self-study program, including grade;
(n) Written examination and skills examination, including grade;

(o) Results of drug test.

(3) The school shall furnish each commercial driver license training student upon request of the student a copy of his or [her] student instruction record when he or [she] ceases taking instruction at the school.

(4) Each school shall create and maintain for each training class a student roster to be sent to the Kentucky State Police and the Kentucky Community and Technical College System during the first week of training that shall contain:
(a) Complete name of student, including any known nicknames or aliases, if any;
(b) Complete address of student;
(c) Social Security number;
(d) Date of birth of student;
(e) Class D Kentucky driver license number;
(f) Whether the student has previously enrolled in any commercial driver license training program, and if so, whether or not the student successfully completed the previous commercial driver license training program;
(g) Whether the student is enrolled in the commercial driver license training program as a refresher course; and
(h) The date the student is eligible for skills testing by the Kentucky Community and Technical College System.

(5) All student records, school facilities, and school equipment are subject to inspection by the board and its representatives upon request and without prior notice to the school.

Section 2. Schedule of Fees Charged to Students and Refund Policy. (1) Each licensed commercial driver license training school shall publish a schedule of fees charged to students for instruction to include:
(a) Administrative fee;
(b) Registration/application fee;
(c) Tuition for instruction;
(d) Commercial driver license permit fee;
(e) Off-the-road and [in] on-the-road training fees; and
(f) Room and board costs.

(2) The schedule of fees shall be published:
(a) In the school's catalog;
(b) In the student contract or enrollment agreement; and
(c) Within the school's facility by being conspicuously displayed at the school.

(3) Each licensed commercial driver license training school shall establish and adhere to a refund policy to be published:
(a) In the school's catalog;
(b) In the student contract or enrollment agreement; and
(c) Within the school's facility by being conspicuously displayed at the school.

(4) At least five (5) days before a prospective student signs a contract or enrollment agreement, the commercial driver license school shall provide to the prospective student:
(a) The school catalog;
(b) The [last] student contract or enrollment agreement; and
(c) The [last] student loan agreement, if any.

Section 3. Contracts and Agreements Involving Licensed Commercial Driver License Training Schools. (1) Each licensed commercial driver license training school shall:
(a) File and maintain with the board an accurate and current list of those persons authorized by the school to execute student enrollment contracts and student tuition loan agreements on behalf of the licensed commercial driver license training school including a sample of each person's signature;
(b) Provide to each student who enters a contract or agreement with a licensed commercial driver training school a copy of the signed contract or enrollment agreement; and
(c) File the original of each student contract or enrollment agreement.
agreement in the permanent student record maintained by the
school.
(2) All contracts executed by the licensed commercial driver
license training schools and its students shall contain the following
information:
(a) The name and address of the school. If the school is con-
ducted under an assumed name or is operated by a corporation,
partnership, or association, the contract or enrollment agreement
shall [must] contain the name of the individual owners or names
of members of the partnership;
(b) A statement containing the following text in at least fourteen
(14) point font: "This constitutes the entire agreement between the
school and the student. No verbal agreements or promises shall be
recognized by either the school or the student.";
(c) The school refund policy;
(d) A signature and date line for the student and an authorized
school personnel;
(e) A complete description of all fees charged as set forth in
Section 2 of this administrative regulation; and
(f) A statement containing the following text in at least fourteen
(14) point font: "The Kentucky Revised Statutes and Kentucky Ad-
ministrative Regulations governing licensed commercial driver
training schools are available at the facility upon request."
Section 4. Advertising and Solicitation of Students by Commer-
cial Driver License Training Schools. (1) A [[a] person, school,
institution, organization, company, association, or partnership shall
not advertise or advertise to recruit students unless licensed by the
board.
(2) A licensed commercial driver license training school shall not
use any name other than its licensed name, nor shall it advertise or
imply that it is "supervised," "recommended," "accredited," or "en-
dorsed" by the State Board for Proprietary Education. A school may
state "Licensed by the Kentucky State Board for Proprietary Edu-
cation" in its advertisements.
(3) A licensed commercial driver training school shall not:
(a) Claim nor imply that it guarantees employment upon suc-
cessful completion of the program;
(b) Guarantee or imply that it guarantees the student will re-
ceive a commercial driver license training permit or commercial
driver license;
(c) Make any false, misleading, or deceptive claims or guaran-
tees of expected annual income or employee benefits;
(d) Hold itself out as being any type of establishment other than
an educational establishment;
(e) Use a name that is like or deceptively similar to a name used
by another commercial driver license training school [as determined
by the board];
(f) Advertise or imply that instruction may be given to students
who fail the program or examinations without charge to the student
unless such instruction without examination is contained in the
student contract or enrollment agreement; and
(g) Advertise or solicit in the "help wanted" section of any news-
paper or periodical.
(4) A licensed commercial driver license training school shall
submit a copy of all advertisements and directory listings to the
board at least thirty (30) days prior to the scheduled publishing date.
Section 5. Inspections of Commercial Motor Vehicles Used by
Commercial Driver License Training Schools, Including Mandatory
Equipment and Out-of-Service Criteria. (1) Annual inspection. The
Kentucky State Police shall at least annually inspect all commercial
driver license training vehicles. The school shall maintain a copy of
the results of the inspection in the vehicle.
(2) In order to be approved, the vehicle shall be:
(a) Owned or leased by the licensed school;
(b) In safe operating condition;
(c) Not more than ten (10) years old for vehicles used for on-the-
road instruction, and not more than (15) years old for vehicles used
for off-the-road instruction;
(d) Included on the school's liability insurance policy as mandated
by KRS 165A.475(1)(d);
(e) Equipped with seat belts as established by [in accord with]
KRS 189.125;
(f) Equipped with functioning side-view and rear-view mirrors;
(g) Identified and clearly displayed on the front, sides, and rear
of the vehicle, in letters not smaller than six (6) inches in height and
in a color vividly contrasting with the color of the vehicle, the:
1. Name of the commercial driver license training school; and
2. Words "Student Driver."
(3) Expiration of safety inspection and notification of vehicle
changes. The commercial driver license training school shall:
(a) Maintain proof that the vehicle is inspected by the board
representative annually and passes the inspection;
(b) Remove from use any vehicle which has not passed the
inspection by the Kentucky State Police;
(c) File with the board written notice when a vehicle has been
added or deleted from the school's motor vehicle fleet and have
submitted to the board a revised insurance policy as mandated by
KRS 165A.475(1)(d) no later than five (5) business days from the
date that the vehicle was added or deleted from the school's motor
vehicle fleet.

HARRY BECK, Ed.D., Chair
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FINANCE AND ADMINISTRATION CABINET
State Board for Proprietary Education
(As Amended at ARRS, August 7, 2003)

201 KAR 40:090. Complaint procedure against agents, com-
mercial driver license training schools, uncredentialed agents,
and uncredentialed commercial driver license training schools.

RELATES TO: KRS Chapter 13B, 165A.330(1), 165A.350(4)(b),
165A.360(3)(b), 165A.377(2)(-4), 165A.490, 165A.495,
165A.510(10), 165A.400, 165A.415, 165A.990.

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.400,
165A.510, 165A.330(1), 165A.350(4)(b), 165A.360(3)(b), 165A.377(2)
165A.490, 165A.495, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS
165A.510(10) authorizes [165A.140-165A.515 mandates that the] the
State Board for Proprietary Education to establish the procedures
for making complaints against commercial driver license training
schools licensed by the board, agents, and uncredentialed commer-
cial driver license training schools. This administrative regulation
establishes these standards for complaints.

Section 1. Definitions. (1) "Chair" means the chair or vice-chair
of the board.
(2) "Charge" means a specific allegation contained in a formal
complaint, as established in Section 4(3) of this administrative
regulation issued by the board alleging a violation of a specified
provision of KRS Chapter 165A or the administrative regulations
promulgated thereunder.
(3) "Complaint" means a written allegation alleging misconduct
by an agent or commercial driver license training school which might
constitute a violation of KRS Chapter 165A or the administrative
regulations promulgated thereunder, or another state or federal
statute or regulation applicable to an agent or commercial driver
license training school.
(4) Formal complaint means a formal administrative pleading
authorized by the board which sets forth charges against a licensed
commercial driver license training school or agent and commences
a formal disciplinary proceeding pursuant to KRS Chapter 13B or
requests a court to take action.
(5) "Informal proceeding" means a proceeding instituted during
the disciplinary process with the intent of reaching a resolution of the
matter without further recourse to formal disciplinary procedures
under KRS Chapter 13B.
(6) "Investigator" means an individual designated by the board
to assist in the investigation of a complaint or an investi-
gator employed by the Attorney General or the board.
(7) "Complaint committee" means the committee appointed
pursuant to Section 8 of this administrative regulation.
Section 2. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity. A complaint shall be in writing and shall be signed and certified as to its truth by the person offering the complaint. The board may file a complaint based on information in its possession. A complaint may be filed by an individual, organization, or entity with the board on a "Complaint Form" with an "Authorization for Release of All Pertinent Student Records to the State Board for Proprietary Education.*

(2) Upon receipt of a complaint:
   (a) A copy of the complaint shall be sent to the last known address on file with the board for the agent and commercial driver license training school named in the complaint along with a request for a written response to the complaint. The agent and commercial driver license training school shall file a written response with the board within ten (10) days from the date of receipt.
   (b) Upon receipt of the written response of the agent and commercial driver license training school named in the complaint, a copy of those [such] responses shall be sent to the complainant. The complainant shall have ten (10) days from the date of receipt to submit a written reply with the board to the responses.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the response, the complaints committee shall consider the complaint, responses, and complainant's reply to the responses, and other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If, in the opinion of the board, a complaint does not warrant the formal investigation of a complaint against an agent or commercial driver license training school, the board shall dismiss the complaint and notify both the complainant and the agent and commercial driver license training school of the outcome of the complaint.

(3) If, in the opinion of the board, a complaint warrants a formal investigation against either an agent or commercial driver license training school, then the board shall authorize the executive director of the board or an investigator to investigate the matter and make a report to the complaints committee.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of a formal investigation, the complaints committee shall consider the facts regarding the complaint. The committee shall review an investigative report, supporting documents, and make a recommendation to the board. The board shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a formal complaint shall be filed.

(2) If, in the opinion of the board, a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complainant and the commercial driver license training school and agent of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint against an agent or commercial driver license training school, then the complaints committee shall prepare a formal complaint which states the charges or charges to be considered at the hearing. The formal complaint shall be signed by the executive director and served upon the agent or commercial driver license training school as required by KRS 13B.040. If the formal complaint is against an agent, then the commercial driver license training school employing the [such] agent shall be provided with a copy of the [such] formal complaint.

Section 5. Uncredentialed School and Uncredentialed Agents. If, in the opinion of the board, a school may be operating as a commercial driver license training school without appropriate credential, or a person may be operating as an agent without appropriate credential, then the board may take any one (1) or a combination of the following actions:

   (1) Issue a letter ordering that school or person cease and desist from the operation of a commercial driver license training school or the conduct of an agent.
   (2) Forward information to the county attorney of the county of residence of the school or person allegedly acting without appropriate credential with a request that appropriate action be taken under KRS 165A.990; or
   (3) Initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized operation of a school or agent.

Section 6. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel and the complaints committee, may enter into informal proceedings with the commercial driver license training school and agent who is the subject of the complaint for the purpose of appropriately resolving [such] the matter.

   (a) An agreed order or settlement reached through this process shall be approved by the board and signed by the commercial driver license training school or agent who is the subject of the complaint and the chair.
   (b) The board may employ mediation as a method of resolving the matter informally.

(2)(a) The board may issue a written admonishment to the agent and to a commercial driver license training school if in the judgment of the board:

   1. An alleged violation is not of a serious nature; and
   2. The evidence presented to the board after the investigation and appropriate opportunity for the commercial driver license training school and agent to respond, provides an indication that the alleged violation did in fact occur.

   (b) A copy of the admonishment shall be placed in the permanent file of the proprietary school and agent.

   (c) Within thirty (30) days of receipt of an admonishment, the proprietary school or agent may submit a file:

   1. A response to the admonishment which shall be placed in the proprietary school or agent's permanent licensure file; or
   2. A request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment, file a formal complaint, and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

Section 7. Notice and Service Process. A notice required by KRS Chapter 165A or this administrative regulation shall be issued pursuant to KRS 13B.040 to the last known address on file with the board.

Section 8. Complaints Committee. The complaint committee shall:

   (1) Be appointed by the chair of the board to:
   (a) Review a complaint or investigative report; and
   (b) Participate in an informal proceeding to resolve a formal complaint.

   (2) Consist of three (3) persons, at least one (1) person to be a public member, who may be assisted by the executive director of the board and counsel to the board.

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

   (a) Complaint Form (July 13, 2001 edition);
   (b) Authorization for Release of All Pertinent Student Records to the State Board for Proprietary Education (July 13, 2001, edition);
   (c) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Reservoir Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
Section 1. The following standards shall apply to Kentucky resident CDL driver training school facilities:

(1) A Kentucky resident CDL training school location shall have and maintain an established place of business in the Commonwealth of Kentucky.

(2) The establishment of business of each Kentucky resident CDL driver training school shall:
   a) Be owned or leased by the driver training school;
   b) Regularly occupied; and
   c) Solely used by that driver training school for the business of;
      1. CDL driver training instructions for hire;
      2. Preparing members of the public for examination for a commercial motor vehicle operator’s license; and
      3. Instruction of knowledge and skills for entry level tractor and trailer drivers or commercial motor vehicle operators.

(3) The establishment of business of each Kentucky resident CDL driver training school shall be located in a district zoned for business or commercial purposes. The Kentucky resident CDL driver training school office shall have a permanent sign displaying the licensed school name. If the classroom and/or training yard is at a different address, it too shall have a permanent sign meeting the same criteria.

(4) The existence of a business or advertised address of any Kentucky resident CDL driver training school shall not consist of or include a house trailer, residence, tent, temporary address, office space only, a room or rooms in a hotel, rooming house or apartment house, or premises occupied by a single or multiple unit dwelling house. Furthermore, a modular building or structure for use as a classroom or office shall be permanently affixed to the property.

(5) The Kentucky resident CDL training school, office and classes shall be operated by responsible personnel during stated office hours and shall be open to inspection of the premises, records and vehicles by any authorized representative of the board during this time.

(6) The Kentucky resident CDL training school shall have a business telephone used exclusively for the operation of the business and operational during the stated office hours.

(7) A Kentucky resident CDL driver training school shall not transfer its license without filing the Application to Transfer Ownership of a Proprietary School, incorporated by reference, for prior approval of the board. There will be a $500 fee for the transfer of ownership.

(8) Should a Kentucky resident CDL driver training school discontinue operations, the license, and all student records shall be surrendered immediately to the board, at the expense of the licensee.

(9) A branch or satellite Kentucky resident CDL driver training school shall be licensed as an independent Kentucky resident CDL driver training school and meet all of the requirements of the board as provided for in KRS Chapter 165A and 201 KAR 40:040 to 201 KAR 40:090.

Section 2. The following standards shall apply to Kentucky resident CDL driver training school classroom facilities:

(1) The classroom facility of each Kentucky resident CDL driver training school shall be reasonably near its office facility and within thirty (30) minutes normal driving time of that facility.

(2) The classroom shall contain sufficient space and equipment to carry on the business of classroom instruction for students enrolled in the Kentucky resident CDL driver training school, and preparation of students for examination for a commercial motor vehicle operator’s license.

(3) The classroom facility shall have adequate lighting, heating, ventilation, sanitation facilities, and shall comply with all state and local laws relating to public health, safety and sanitation.

(4) The classroom facility shall contain the following equipment and supplies:
   a) Individual desks or tables with writing surfaces for not less than eight (8) students;
   b) Adequate blackboards which are visible from all seating areas;
   c) Adequate charts and diagrams or pictures relating to the operation of commercial motor vehicles and traffic laws;
   d) One (1) of the following:
      1. Overhead projector or multimedia projector; or
      2. A thirty-five (35) millimeter slide projector and slides; or
      3. A video/audio display screen of not less than nineteen (19) inches diagonal, capable of operation in conjunction with a video tape for providing driver training instructions; and
   e) All Kentucky Revised Statutes and administrative regulations governing CDL driver training schools, commercial motor vehicle operator license requirement and federal motor carrier rules and regulations, shall be prominently displayed so as to be accessible to applicants for enrollment and all students.

(5) In addition to the foregoing, the following are suggested teaching aids:
   a) A reaction time testing device;
   b) Peripheral vision testing device;
   c) Magnetic traffic boards; and
   d) Other devices that are necessary in acquiring students with state and federal traffic laws and preparing them to safely operate commercial motor vehicles.

Section 3. [4.] Relocation of a Licensed Kentucky Resident CDL Driver Training School. Prior to relocating any Kentucky resident CDL driver training school office, classroom facility, behind-the-wheel training facility or location, or equipment thereof, the Kentucky resident CDL driver training school shall:

(1) Submit a completed Application to Change the Location of a Proprietary School, incorporated by reference.

(2) Submit documentation indicating the new location is in compliance with all fire and safety codes.

(3) Submit the required change of school location application fee of $500 by certified check or money order made payable to the Kentucky State Treasurer;

(4) Complete a successful inspection by the Kentucky State Police pursuant to the procedures outlined by KRS 165A.475(4).

Section 5. Incorporation by Reference. (1) "Application to Change the Location of a Proprietary School", 7/2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Proprietary Education, 911 Leawood drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HARRY BECK, Ed.D., Acting Chair
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DEPARTMENT OF AGRICULTURE
Marketing and Product Promotion
(As Amended at ARRS, August 7, 2003)


RELATES TO: KRS 247.800 to 247.810

STATUTORY AUTHORITY: KRS 247.810

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.810 authorizes the Commissioner of Agriculture, in conjunction with the Secretary of the Tourism Development Cabinet, to promulgate administrative regulations to implement the provisions of KRS 247.800 to 247.810. This administrative regulation sets forth standards for approval by the department of temporary agritourism sites.
Section 1. Definition. "Temporary agritourism site" means a seasonal, agricultural-related tourism activity held on a working farm.

Section 2. Requirements for Approval. To be approved as a temporary agritourism site, an application shall be submitted to the department four (4) weeks prior to the start of the agritourism event and the site (temporary agritourism site) shall comply with the following requirements:

1. Off-the-road parking shall be available for vehicles. [In an event] Vehicles shall not be permitted to park on any federal, state, or county road, highway, or right-of-way under any circumstance.
2. Public restrooms shall be available for visitors to the event.
3. Days and hours of operation shall be posted at the entry to the temporary agritourism site.
4. The owner or operator of the temporary agritourism site shall maintain a general liability insurance policy that provides coverage for the temporary agritourism event. Proof of the required liability insurance shall be submitted to the department with the application for approval.

Section 3. Incorporation by Reference. (1) "[The following material is incorporated by reference.] Application for Temporary Agritourism Site (March 2003)"

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, by the Department of Agriculture, Office of Marketing and Product Promotion, 7th Floor Capital Plaza Tower, 500 New Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BILLY RAY SMITH, Commissioner
APPROVED BY AGENCY: May 15, 2003
FILED WITH LRC: May 27, 2003 at 1 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, August 7, 2003)

401 KAR 57-002. 40 C.F.R. Part 61 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01 to 61.139, 61.160 to 61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01 to 61.139, 61.160 to 61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 74120.

Section 1. Definitions. (1) For purposes of 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 61, "Part 61 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). (4) For purposes of 40 C.F.R. Part 61, "Part 61 NESHAP" shall be the National Emission Standards for Hazardous Air Pollutants codified in 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). (3) For purposes of 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), the "administrator" shall be the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 61.01 to 61.19 (Subpart A), "General Provisions", which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 C.F.R. Part 61, Appendices A through E, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 61 NESHAP [incorporated by reference in Section 3 of this administrative regulation].

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

(a) 40 C.F.R. 61.01 to 61.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]


(c) 40 C.F.R. 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]

(d) 40 C.F.R. 61.40 to 61.44 (Subpart D), "National Emission Standard for Beryllium Rocket Motor Firing", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]

(e) 40 C.F.R. 61.50 to 61.56 (Subpart E), "National Emission Standard for Mercury", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]

(f) 40 C.F.R. 61.60 to 61.71 (Subpart F), "National Emission Standard for Vinyl Chloride", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]

(g) 40 C.F.R. 61.90 to 61.97 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]


(i) 40 C.F.R. 61.110 to 61.112 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]


(k) 40 C.F.R. 61.130 to 61.139 (Subpart L), "National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]


(m) 40 C.F.R. 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]

(n) 40 C.F.R. 61.180 to 61.186 (Subpart P), "National Emission
(t) 40 C.F.R. 61.270 to 61.277 (Subpart Y), "National Emission Standards for Benzene Emissions from Benzene Storage Vessels", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]
(w) "Appendix A to Part 61, National Emission Standards for Hazardous Air Pollutants, Compliance Status Information", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]
(x) "Appendix B to Part 61, Test Methods", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]
(y) "Appendix C to Part 61, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]
(A) "Appendix E to Part 61, Compliance Procedures Methods for Determining Compliance with Subpart I", as published in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2002; [2004]
(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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;
(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, [3200 Thoroughbred Street], Ashland, Kentucky 41102 [44106], (606) 929-5285 [920-2087]
(c) Bowling Green Regional Office, 1508 West Avenue, Bowling Green, Kentucky 42104, (727) 746-7475;
(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;
(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (806) 435-6022;
(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;
(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 697-7304; and
(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42033, (270) 898-8468.

EMERGENCY PRINTING OFFICE, WASHINGTON, D.C. 20402.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: MAY 14, 2003
FILED WITH LRC: MAY 15, 2003 AT 10 A.M.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, August 7, 2003)

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, 42 U.S.C. 7411

STATUTORY AUTHORITY: KRS 224.10-100(9), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, 42 U.S.C. 7411

NECESSITY, FUNCTION, AND CONTENT: KRS 224.10-100(9) requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the Standards of Performance for New Stationary Sources (NSPS) codified in 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) For purposes of 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, [Subparts A, D to XX, BBB to NNN, and PPP to DDDD], "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 60, "Part 60 NSPS" means the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, [Subparts A, D to XX, BBB to NNN, and PPP to DDDD]. (1) For purposes of 40 C.F.R. Part 60, Part 60 NSPS shall be the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, [Subparts A, D to XX, BBB to NNN, and PPP to DDDD].

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, [Subparts A, D to XX, BBB to NNN, and PPP to DDDD]. These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 60.1 to 60.19 (Subpart A), "General Provisions", which are incorporated by reference in Section 3 of this administrative regulation;
(2) The applicable methods, procedures, and reporting requirements contained in 40 C.F.R. Part 60, Appendices A through F, which are incorporated by reference in Section 3 of this administrative regulation; and
(3) The applicable Part 60 NSPS [incorporated by reference in Section 3 of this administrative regulation].

Section 3. Incorporation by Reference. (1) The following material
is incorporated by reference:
(a) 40 C.F.R. 60.1 to 60.19 (Subpart A), "General Provisions," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(b) 40 C.F.R. 60.40 to 60.46 (Subpart D), "Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1974," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(c) 40 C.F.R. 60.40a to 60.40a (Subpart Da), "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 16, 1976," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(d) 40 C.F.R. 60.40b to 60.49b (Subpart Db), "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(e) 40 C.F.R. 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(f) 40 C.F.R. 60.40g to 60.54 (Subpart Dd), "Standards of Performance for Incinerators," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(g) 40 C.F.R. 60.50a to 60.59a (Subpart De), "Standards of Performance for Municipal Waste Combustors For Which Construction is Commenced After December 20, 1989 and On or Before September 20, 1995," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(h) 40 C.F.R. 60.50b to 60.59b (Subpart Eb), "Standards of Performance for Large Municipal Waste Combustors For Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(i) 40 C.F.R. 60.50c to 60.58c (Subpart E), "Standards of Performance for Hospital/Medical/Infectious Waste Incinerators For Which Construction is Commenced After June 20, 1995," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(j) 40 C.F.R. 60.60 to 60.66 (Subpart F), "Standards of Performance for Portland Cement Plants," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(k) 40 C.F.R. 60.70 to 60.74 (Subpart G), "Standards of Performance for Nitric Acid Plants," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(l) 40 C.F.R. 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(m) 40 C.F.R. 60.80 to 60.93 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(n) 40 C.F.R. 60.100 to 60.109 (Subpart J), "Standards of Performance for Petroleum Refineries," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]
(r) 40 C.F.R. 60.120 to 60.123 (Subpart L), "Standards of Performance for Secondary Lead Smelters," as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2002; [2004]

(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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382; (b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashtabula, Ohio 44004, (414) 929-5285; [2003-2007] (c) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky 42104, (270) 746-7475; (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923; (e) Hazard Regional Office, 233 North Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022; (f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157; (g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42403, (270) 687-7304; and (h) Paducah Regional Office, 4500 Clark River Road, Paducah, Kentucky 42003, (270) 899-9468. (3) Copies of the Code of Federal Regulations (C.F.R.) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: May 14, 2003
FILED WITH LRC: May 15, 2003 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, August 7, 2003)


RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.5779 [63.2872], 42 U.S.C. 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100(9), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.5779 [63.2872], 42 U.S.C. 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.5779 [63.2872].

Delegation of implementation and enforcement authority for federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(1).

Section 1. Definitions. (1) For purposes of 40 C.F.R. 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.5779 (Subparts A, D, and F to VVVs), "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 63, "Part 63 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.5779 (Subparts A, D, and F to VVVs). (3) For purposes of 40 C.F.R. Part 63, "Part 63 NESHAP" shall be the National Emission Standard for Hazardous Air Pollutants codified in 40 C.F.R. 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.5779 [63.2872] (Subparts A, D, and F to VVVs [63.2872]). (4) For purposes of 40 C.F.R. 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.5779 [63.2872] (Subparts A, D, and F to VVVs [63.2872]), the "administrator" shall be the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.5779 (Subparts A, D, and F to VVVs [63.2872] [63.2872]). These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 63.1 to 63.15 (Subpart A), "General Provisions" [which is incorporated by reference in Section 3 of this administrative regulation];

(2) For sources that applied for early reduction credit and wish to extend the deadline for compliance demonstration, the applicable provisions in 40 C.F.R. 63.70 to 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants" [which is incorporated by reference in Section 3 of this administrative regulation];

(3) The applicable test methods, procedures, and other provisions contained in 40 C.F.R. Part 63, Appendices A through K, which are incorporated by reference in Section 3 of this administrative regulation; and

(4) The applicable Part 63 NESHAP [incorporated by reference in Section 3 of this administrative regulation].

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


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(bbb) 40 C.F.R. 63.1541 to 63.1559 (Subpart TTT), "National Emission Standards for Hazardous Air Pollutants from Primary Copper Smelting", as published in the Code of Federal Regulations, 40 C.F.R. Part 63, July 1, 2002; [2004]
Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation. (2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation. (3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water or weathering processes, form acids that may create acid drainage. (4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas and processing plants. (5) "Approximate original contour" is defined in KRS 350.010(13). (6) "Backfill" means excavated overburden material used to regrade a mined area. (7) (6) (10) "Cabinet" is defined in KRS 350.010(10). (8) (24) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce run-off velocity for deflecting erosion. (9) (41) "Clay" means a natural substance or soft rock which, when finely ground and mixed with water, forms a plastic, moldable mass that preserves its shape when air dried; the particles soften and coalesce upon being highly heated and form a stony mass upon cooling. (10) (49) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials. (11) (49) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or legumes, and includes: row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to, or an integral part of, these operations is also included for purposes of this land use category. (12) (44) "Department" means the Kentucky Department for Surface Mining Reclamation and Enforcement. (13) (42) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released and processing plant and stockpile areas have been moved. (14) (44) "Diversion ditch" means a channel constructed to direct water from one (1) location to another. (15) (44) "Division" means the Division of Field Services of the Kentucky Department for Surface Mining Reclamation and Enforcement. (16) (44) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, CaMg(CO₃)₂. Many limestones contain small amounts of Dolomite; however, the term Dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate. (17) (44) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel. (18) (42) "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two or more different habitat types occurring in close proximity to each other. Where two (2) habitats meet is referred to as an "edge". (19) (48) "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes. (20) (48) "Ephemeral stream" means a stream which only flows in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom which is always above the local water table. (21) (20) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity. (22) (24) "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: wetlands, forested areas, shrub-scrub, grass-legume or open areas, and wetland or open water areas arranged in a manner as to promote edge effects for wildlife. (23) (22) "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year flood frequency. (24) (23) "Fluor spar" means any ore of the mineral Fluorite CaF₂. This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Covington-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity. (25) (24) "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees. (26) (25) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issues under 401 KAR 5:055. (27) (26) "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate. (28) (44) "Groundwater" means water which is in the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bonding. (29) (26) "Growing season" means the period during a (1) year cycle, from the last killing frost in spring to the next killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October. (31) (26) "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine. (32) (24) "Hollowfill" means a fill structure placed in a hollow
where the side slopes of the existing hollow, measured at the steepest point, are greater than twenty (20) degrees or the average slope of the profile of the hollow, from the toe of the fill to the top of the fill, is greater than ten (10) degrees.

33) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of KRS Chapters 350 through 353 or 405 KAR Chapters 1 through 30 (applicable state laws and administrative regulations with a minor exception); which condition, practice, or violation would reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

34) "Landfill" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

35) "Industrial/commercial land use" means lands used for:

(a) The extraction or transformation of materials, for fabrication of products, wholesaling of products, or for long term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included; or
(b) Retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included.

36) "Intermittent stream" means:

(a) A stream, or reach of stream, that drains a watershed of one (1) square mile or more but does not flow continuously throughout the calendar year; or
(b) A stream, or reach of stream, that is below the local water table for at least some part of the year, and obtains its flow from both surface water and groundwater discharge. This term does not include ephemeral streams.

37) "Lime" means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

38) "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral Calcite CaCO₃. However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly Calcite or Dolomite, but may contain small amounts of iron carbonates (Siderite).

39) "Main" means nuts, acorns, and fruit produced by certain woody plant species.

40) "Mineral operation" means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel; surface disruption of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; mining of fluor spar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incidental to the reclamation of the mine or dredging operation as required by this Title. This term does not include coal mining (coal mining) or oil shale mining.

41) "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

42) "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 or 405 KAR Chapter 5 are satisfied.

43) "Natural drainways" means ephemeral areas, gulleys, ravines, streams, and similar topographical features occurring naturally, with control of the direction of surface water flow.

44) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of mineral operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

45) "Noxious plants" means species that have been included on state and federal lists of noxious plants.

46) "Outslope" means the face of the spoil, natural ground, or embankment sloping downward from the highest elevation to the lowest elevation.

47) "Outstanding resource waters" means surface waters designated by the cabinet pursuant to 401 KAR 5:031, Section 7.

48) "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to, or an integral part of, these operations is also included.

49) "Perennial stream" means a stream, or stream reach, that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off.

50) "Perpetual impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dyke, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

51) "Permit" means written approval issued by the cabinet to conduct mineral operations.

52) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by mineral operations under that permit.

53) "pH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

54) "PLS" means pure live seed.

55) "Point source" is defined in 401 KAR 5:050.

56) "Recreation land use" means land used for public or private leisure time use, including developed recreation facilities such as, parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

57) "Residential land use" means tracts employed for single and multifamily housing, mobile home parks, and other residential lodgings. Also included, is land used for support facilities such as, vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

58) "Rocks" means haul roads and access roads constructed, used, reconstructed, improved or maintained for use in mining and stockpiling finished products, within permit boundaries. The term excludes any roadways located in the mining pit area.

59) "Run-off" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

60) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by engineering practices.

61) "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 0.16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

62) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

63) "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and settle, store sediment or other debris.

64) "Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.

(b) An environmental harm is imminent if a condition, practice, or violation exists which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.
(c) An environmental harm is significant, if that harm is appreciable, and not immediately reparable.

(Slope) *Slope* means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance. It may also be expressed as a percent or in degrees.

(Soil horizon) *Soil horizon* means contrasting layers of soil parallel, or nearly parallel to, the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most commonly differentiated from the underlying A horizon by a lighter color and is generically measureable less organic matter. The E horizon is most commonly separated from the B horizon in the same sequence by color of higher value or lower color, by coarser texture or by a combination of these properties.

(c) "B horizon." The layer that is immediately below the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.

(Soil) *Splt* means overburthen which has been removed during mining operations.

(Soil) *Stabilize* means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, riprapping, or by vegetation.

(Soil) *Stream buffer zone* means an area of forest or field left untouched and undisturbed by the mining operator during mining, including haul road construction.

(Soil) *Strip mining* is defined in KRS 350.010(2).

(Soil) *Surface disturbance of dredging river or creek sand and gravel* means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(Soil) *Surface disturbance of underground mining* means above ground activities incidental to subsurface mineral extraction or in situ processing, including construction, use, maintenance, and reclamation on roads; above-ground repair areas; storage areas; processing areas; and shipping areas; areas upon which are sited support facilities including, but not limited to, support for water treatment which are situated on property owned, leased, or under valid easement by a permitted discharger, are not considered to be surface waters of the Commonwealth.

(Soil) *Susended solids* means organic or inorganic materials carried or held in suspension in water that will remain on a 45 micron filter.

(Tar sand or rock asphalt) *Tar sand or rock asphalt* means a porous, consolidated or unconsolidated sand or sandstone whose interstices contain asphalt or bitumen.

(Temporary) *Temporary mineral operation* means a mineral operation that operates for a total of six (6) months or less at a location.

(Tope) *Topoell* means the A and E horizon layers of the four (4) master soil horizons.

(Toxic) *Toxic-forming materials* means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(Waste) *Waste* means materials which are washed, otherwise separated or left from a mineral product) slurried or otherwise transported from the processing facilities or preparation plants of any kind.

(Water table) *Water table* means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(Water withdrawal permit) *Water withdrawal permit* means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(Wetland) *Wetland* means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) *Hydric soil* means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

(b) *Hydrophytic vegetation* means a plant growing in:

1. Water; or

2. A substance that is at least periodically deficient in oxygen during a growing season as a result of excess water content.

(Wild rock river) *Wild river* means a water which has been designated as a wild river by the General Assembly pursuant to KRS 145.241 [Chapter 146].

HERN C. LIST, Secretary
APPROVED BY AGENCY: April 11, 2003
FILED WITH LRC: April 11, 2003 at 2 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended at ACRS, August 7, 2003)

405 KAR 5:030. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300
STATUTORY AUTHORITY: KRS [Chapter 132A], 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 132A in pertinent part, referred to herein as the Cabinet] to promulgate administrative regulations pertaining to noncoal mineral operations; to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standarcs for the conservation and use of mined land. This administrative regulation specifies certain information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes... [Also consider deleting any provisions concerning review of permits and other permit related procedural matters.]

Section 1. General. (1) This administrative regulation shall pertain... to any person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements. A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas; including but not limited to,
location of access roads, spoil or waste areas, and sedimentation ponds. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons including appropriate representatives of the applicant. (6) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Surface Mining Reclamation and Enforcement, Division of Field Services, Noncoal Review Branch, #2 Hudson Hollow, Frankfort, Kentucky 40601, or to the Division of Field Services at one of the following regional offices: (a) London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9011; (b) Madisonville Regional Office, 625 Hospital Drive, Madisonville, Kentucky 42431-1683; (c) Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1223; (d) Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9331; or (e) Prestonsburg Regional Office, 3140 South Lake Drive, Suite 6, Prestonsburg, Kentucky 41653-1410, [location and address prescribed by the cabinet.] Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of: (a) The applicant, including his phone number; (b) The registered agent for service of process, if applicable, including his phone number; (c) Any owners, partners, or if a corporation, any officers or stockholders owning ten (10) percent or more stock, and the Social Security number of each person identified under this paragraph, except submission of a Social Security number shall be voluntary; (d) The project engineer, along with his registration number and name of associated firm; (e) The company and individual [engineer] in which correspondence concerning the subject permit shall be addressed to; (f) Surface owners of record within the area proposed for mining, including areas overlying underground workings; (g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and (h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings. (2) If the company has undergone a name change or changes during the previous five (5) years, the applicant shall list the names. (3) The applicant shall specify the applicant's legal structure. (4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, the applicant shall specify the county and state where the name is registered. (5) The applicant shall list previous Kentucky permits held by the applicant or any individual, partnership or corporation associated with the applicant. (6) The applicant shall provide the name of the contact person at the site, including his phone number. (7) The applicant shall specify the type of application, along with the permit number. Section 3. Bond Information. [When bond is required, as specified under 405 KAR 5.088.] The following information shall be provided in the permit application: (1) The bond amount per acre; (2) The total amount of bond; and [and] (3) The bond type: (a) If a surety is used, the applicant shall provide the bond number and surety. (b) If a certificate of deposit is used, the applicant shall provide the bank name and CD number. (c) If a letter of credit is used, the applicant shall provide the bank name and letter of credit number. Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and re-claiming the affected area of the proposed mineral operation. Section 5. Waivers and Approvals. (1) If a mineral operation [if mining] will occur within 300 feet of an occupied dwelling [or if mineral extraction will occur within 100 feet of an occupied dwelling], the permit application shall contain a valid written waiver from the owner of the dwelling that consents to noncoal mineral operations closer than 300 feet and specifies an allowable distance closer to the dwelling. The waiver shall be knowingly and intelligently executed, and shall be separately from a lease or deed, unless the lease or deed contains an explicit waiver, in which case a copy of the lease or deed shall be included with the permit application. The waiver shall be clear that the owner and signator had the legal right to deny the mineral operation within 300 feet of the dwelling and knowingly waived that right. The waiver shall act as consent to the operation within 300 feet of the dwelling but not closer to the dwelling than the distance specified in the waiver. This subsection shall not apply if the part of the mineral operation that is within 300 feet of the dwelling is a haul road or access road that connects with an existing public road on the side of the public road opposite the dwelling. (c) New waiver requirements in this subsection that first took effect on December 13, 2002 shall apply only to new permits issued after December 13, 2002 and amendments to permits existing on December 13, 2002. (d) A valid waiver obtained prior to December 13, 2002 shall be valid for the purposes of this subsection. (e) A waiver obtained from a previous owner shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 382.110 [state law] or if the mining has proceeded to within the allowable distance specified in the waiver prior to the date of purchase. [Acknowledging approval of the activity.] (2) Except where mine access roads or haul roads join the right-of-way if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and any required approvals from the appropriate agency or local government with jurisdiction over the road. (3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee will have no continuing maintenance responsibility after permit release is required. (4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the Commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for any disturbance within 100 feet of an intermittent or perennial stream. (5) If a sedimentation pond or any other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be [is] required. (6) If water withdrawal is proposed, a Water Withdrawal Permit shall be obtained from the Kentucky Division of Water. (7) If there are local zoning regulations, the applicant shall state this in the application. (8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5.015, Section 4(6). Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with an appropriate date. Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representatives, made in the application, are true and correct. Section 8. Map Requirements. The permit application shall in-
clude original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map which shall:

(a) Delineate the proposed permit area and any areas overlying proposed underground workings; [5]
(b) The permittee of an underground mineral operation shall submit annually an updated map showing the location of the underground workings. The map shall be submitted within thirty (30) days after each anniversary of the date of issuance of the permit. The map shall be considered a status report and need not be processed as a revision to the permit; however, the cabinet may reject the map as incomplete and require that it be revised and resubmitted if it does not meet the requirements of this section; [5]
(c) Be of a scale of not more than one (1) inch to 400 feet; [2]
(d) Show all other mine operations within 500 feet,[4] the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries; [4]
(e) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners; [5]
(f) Delineate all proposed access roads onto the proposed mineral operation; [6]
(g) Show the site slope; [7]
(h) Show the name and location of all streams, rivers, lakes, outstanding resources, water sources pursuant to 401 KAR 5:026 and 5:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, wildlife management areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary; [5]
(i) Locate any sites listed on the National Register of Historic Places and any known archaeological sites; [5]
(j) Delineate any wetlands which may be affected by the proposed mineral operation; [5]
(k) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation; [5]
(l) Show any proposed pit area, sediment structures, storage areas, and any other facilities and features related to the mineral operation; [5]
(m) Provide a north point arrow; [4]
(n) Contain a legend which shall:
(n) Provide the company name;
(o) Provide the application number;
(p) Provide the county and quadrangle names;
(q) Provide the site coordinates;
(r) Provide the site address;
(s) Provide the map scale and contour interval;
(t) Provide a description of the site location including:
1. The nearest stream; and
2. The distance and direction from the nearest road intersection or town;
(u) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;
(v) Provide acreage breakdowns of the various mineral operation features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected; and
(w) Specify the deposit to be mined; and [4]
(x) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:
(a) The engineer's registration number; and
(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:
(a) Latitude and longitude;
(b) The nearest community;
(c) The name of the nearest stream;
(d) The nearest public road intersection; and
(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur.
(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance.
(3) Specification of the mineral to be extracted.
(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation.
(5) Specification of whether any active discharges exist which may affect the proposed mineral operation. If so, provide the following information:
(a) The pH of the discharge; and
(b) The source of the discharge.
(6) Specification of whether underground workings will be encountered, and the distance, in feet, to the nearest active deep mine.
(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural resource information. The applicant shall specify whether any sites listed on the National Register of Historic Places or any known archaeological sites exist within, or adjacent to, the proposed permit boundary.

Section 11. Environmental resources information. (1) The applicant shall indicate whether there are any wildlife management areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them on the map.
(2) The applicant shall indicate whether disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.
(3) The applicant shall indicate whether there are any outstanding resource waters, pursuant to 401 KAR 5:026 and 5:031, within the vicinity of the proposed mineral operation. If so, the applicant shall delineate these waters on the map.

Section 12. Surface Water Quantity and Quality Protection Plan. The permit application shall contain a surface water quantity and quality protection plan which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 5:055, and shall include the following information:
(1) The number of sedimentation ponds proposed, accompanied by designs, drawings and specifications for each structure to include:
(a) The structure number;
(b) The number of acres to be disturbed within the drainage area;
(c) The number of acres in the drainage area;
(d) Sediment storage capacity;
(e) Storage capacity at the principal spillway;
(f) Storage capacity at the emergency spillway;
(g) Spillway capacities;
(h) Structure height measured from the downstream toe; and
(i) All other engineering designs, dimensions and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055 [or otherwise required by the cabinet].
(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment will be removed and disposed.
(3) The applicant shall state whether any permanent sedimentation ponds are proposed.
(4) The permit application shall contain designs, drawings, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.
(5) The permit application shall contain designs, drawings, figures, and calculations as necessary to adequately explain and illustrate all other methods proposed for protecting
surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment which demonstrates compliance with 405 KAR 5:055.

Section 14. Spill Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling and disposal of spill, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that: (a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary.

(b) Specifies the intended postmining land use for the proposed permit area.

(c) If the postmining land use is different from the premining land use, shall include: [provide]

1. A discussion justifying the change, including a discussion of the consideration that has been given to making the proposed land use consistent with surface owner plans and applicable state and local land use plans and programs; and

2. A copy of the comments concerning the proposed land use from the legal or equitable owner of record of the surface of the proposed permit area.

(2) Paragraph (c) [This paragraph] shall apply to new permits issued after December 13, 2002, and shall apply to permits existing on December 13, 2002 if the permittee proposes to change the postmining land use from the postmining land use already approved in the permit.

(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:001.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:070, and is consistent with 405 KAR 5:065, and that provides the following information:

(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium.

(2) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre).

(3) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre).

(4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Transportation Plan. (1) If the application is for a new permit, the application shall contain a plan for transportation of minerals over public roads.

(2) The plan shall identify the portions of the state and county road systems and city streets within a radius of five (5) miles of the proposed mining operation over which the applicant proposes to transport minerals extracted in the operation, or over which persons other than the applicant can reasonably be expected to transport minerals extracted in the operation.

(3) The plan shall state the legal weight limits and vehicle size limits for each roadway or bridge within the five (5) mile radius over which the applicant proposes to transport minerals, or over which persons other than the applicant can reasonably be expected to transport minerals extracted in the operation.

(4) The plan shall describe any proposal by the applicant to obtain approvals, permits, or variances under KRS Chapter 189 from the Kentucky Transportation Cabinet or county officials for transportation of minerals on state or county road systems.

(5) The plan shall describe the anticipated average number of trucks per working day, transporting minerals extracted in the operation, that will traverse each part of the state and county road systems, and the anticipated dimensions, gross vehicle weight, and number of axles of the trucks.

(6) The cabinet shall consult with the Kentucky Transportation Cabinet, and with county and city officials as appropriate, regarding the applicant's transportation plan and the anticipated impacts of the proposed transportation of minerals.

Section 21. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR 5:05 and shall be certified by a Kentucky registered professional engineer.

Section 22. [24.] Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) An [prospective] applicant for a new permit required under KRS Chapter 350, shall publish at least once, a public notice of his intention to file an application for that permit. The publication shall be made by advertisement in the newspaper of largest bona fide circulation, in the county where [wherein] the proposed mining site is located. If the proposed mining site is in more than one (1) county, publication is required in the newspapers of largest bona fide circulation in each county.

(2) The publication shall be made after the date the permit application is submitted to the department, but not more than fifteen (15) days after the date of submittal, [not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department]

(3) The public notice of the [intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals," and may shall be in a manner and form prescribed by the department and shall include[, though not be limited to,] the following:

(a) Name and address of the applicant;

(b) Permit application number;

(c) The location of the proposed mining site, including:

1. The county in which the proposed operation is located;

2. The name of the nearest community and the direction and distance from the community;

3. The direction and distance from the nearest road intersection, and the names or numbers of the roads;

4. The name of the nearest stream or landmark, and the direction and distance from the stream or landmark;

5. The latitude and longitude in degrees, minutes, and seconds; and

6. The name of the USGS 7.5 minute quadrangle topographic map on which the proposed operation is located;

(d) The number of acres of land to be affected;

(e) The kind of mineral to be mined;

(f) The method of mining to be used, whether underground, pit, area, or contour;
(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including but not limited to:
1. An updated operational plan current to the date of request for renewal; and
2. Specification of the status and extent of all mineral operations on the existing permit area;
(c) The present mineral operation is in compliance KRS Chapter 350 and 405 KAR Chapter 5 [with all applicable statutes and administrative regulations]; and
(d) The mineral permittee shall submit a bond required by 405 KAR 5:080 [provide any additional bond that the cabinet may require].

Section 26. (26.) Permit Succession. (1) There shall be no succession on the permitted area without the prior written approval of the cabinet.

(2) The initial mineral permittee shall notify the cabinet, in writing, of any proposed succession.

(3) The cabinet may release the first mineral operator from reclamation responsibility under 405 KAR Chapter 5 [the chapter] as to that particular mineral operation, however:
(a) There shall not be [as] release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of 405 KAR Chapter 5 [the chapter]; and

(b) The successor shall immediately assume, as a part of his obligation under 405 KAR Chapter 5 [the chapter], all liability for the reclamation of the area affected by the former permitted mineral operation.

(4) If the cabinet has given its prior written approval to the succession, a successor in interest to a mineral permittee who applies for a successor permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(5) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 27. (26.) Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:
(a) To technically withdraw the permit application;
(b) To deny the permit application; or
(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date when the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall set forth the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet he may, by written notice, request a hearing by the cabinet, pursuant to 405 KAR 5:095.

(6) The cabinet shall notify the applicant by certified [registered mail] within twenty (20) days after a decision is made.

Section 28. (27.) Criteria for Permit Approval and Denial. No application for a new permit or amendment to an existing permit and no mineral operation shall be approved, unless the application affirmatively demonstrates that the cabinet determines on the basis of information set forth in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that the applicant has complied with all requirements of 405 KAR Chapter 5 [have been complied with];

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5.

(3) The proposed mineral operation will not constitute a hazard
to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation which constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation.

(4) The proposed mineral operation will not adversely affect
natural hazard lands, or a wild river established pursuant to KRS Chapter 146.

(5) The proposed mineral operation will not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area.

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) and rivers or river study corridors as established in any guidelines pursuant to that Act, rivers and their corridors designated under the state Wild Rivers Act pursuant to KRS Chapter 146, and the National Recreation Areas designated by Act of Congress.

(b) Not included within the boundaries of any public park, public building, school, church, community or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery except that a cemetery may be relocated if authorized by KRS 381.755 [applicable state law or administrative regulation], and access shall be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

1. Where mine access roads or haul roads join the right-of-way;

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental entity with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby will be protected;

(e) Not within 300 feet [the distances specified in Section 5 of this administrative regulation], measured horizontally, of an occupied dwelling and the applicant submits with the permit application a valid written waiver [affidavit] from the owner of the dwelling that consents to noncoal mineral operations closer than 300 feet and specifies an allowable distance closer to the dwelling. This paragraph shall not apply if the part of the mineral operation that is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling. The [specifying an allowance, as required by Section 5 of this administrative regulation] waiver shall be knowingly and intelligently executed, and shall be separate from a lease or deed, unless the lease or deed contains an explicit waiver, in which case a copy of the lease or deed shall be included with the permit application. The waiver shall be clear that the owner and signatory had the legal right to deny the mineral operation within 300 feet of the dwelling and knowingly waived that right. The waiver shall act as consent to the operation within 300 feet of the dwelling but not closer to the dwelling than the distance specified in the waiver.

New waiver requirements in this paragraph that first took effect on December 13, 2002 shall apply only to new permits issued after December 13, 2002 and amendments to permits existing on December 13, 2002. A valid waiver obtained prior to December 13, 2002 shall be valid for the purposes of this subsection. A waiver [obtained from a previous owner (owner)] shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 302.110 [state law] or if the mining has proceeded to within the allowable distance specified in the waiver [distance limit] prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required under Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 [all other applicable state and administrative regulations] have been satisfied.

Section 29, [28], Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation will be conducted in compliance with KRS Chapter 350 and 405 KAR Chapter 5 [all applicable state and administrative regulations].

(2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and 405 KAR Chapter 5 and any conditions imposed by the cabinet on the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 30, [29], Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated unless he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters 1 and 3, and 405 KAR Chapters 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for any mineral operation or any surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless:

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum determined by the cabinet after the Division of Abandoned Mine Lands has prepared an estimate of the cost to reclaim the lands, based upon specific conditions [the cabinet finds are adequate to reclaim the lands].

(4) If the applicant, mineral operator, any subcontractor, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied; however, a mineral permit shall not be relieved [nothing contained herein shall be construed as to relieve a mineral permittee] of responsibility with respect to any permit issued to him.

(5) If the cabinet determines that any activity of the applicant regulated pursuant to 405 KAR Chapter 5 is currently in violation of KRS Chapters 149, 150, 224, 350 through 354, 400 KAR Chapters 1 through 3, 401 KAR Chapters 4 through 100, 402 KAR Chapter 3, or 405 KAR Chapters 1 through 30 [any environmental law or environmental administrative regulation of the Commonwealth], then the cabinet shall require the applicant, before the issuance of the permit, to:

(a) Submit proof which can be substantiated by [is satisfactory to] the cabinet that the violation has been corrected, or is in the
obtained, subject to applicable copyright law, at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: July 10, 2003
FILED WITH LRC: July 11, 2003 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended at ARRS, August 7, 2003)

405 KAR 5:035. Signs, [and] markers, and safety barriers.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS [Chapter 33A], 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 33A] in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes [see footnotes] provisions concerning signs, [and] markers, and safety barriers for noncoal mineral operations.

Section 1. General. (1) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material.

(2) Signs and other markers shall be maintained by the mineral permittee during all mineral operations, to which they pertain, and shall be kept legible and visible and shall conform to all local ordinances and codes.

(3) Signs constructed pursuant to Sections 1 through 7 of this administrative regulation shall be constructed of durable material, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways.

(2) Signs shall clearly identify the name, business address, and telephone number of the mineral permittee and identification numbers of current mineral operation permits or other authorizations to operate.

(3) The signs shall not be removed until after release of permit.

(4) Failure to post the signs shall be grounds for revocation of the permit.

(5) The permit boundaries shall be clearly marked by durable and easily recognized markers for the purposes of the permit walk.

Section 3. Stream Buffer Zone Markers. Except if [whereas] specifically approved, lands within 100 feet of perennial and intermittent streams shall not be disturbed. These areas shall [must be] be designated as buffer zones, and shall be marked along the interior boundary of the buffer zone by durable and easily recognized markers.

Section 4. Blasting Signs. Blasting signs shall be posted in accordance with 805 KAR Chapter 4 [the requirements of the Department of Mines and Minerals].
Section 5. Topsoil markers. (1) If applicable, stockpiles, and other areas where topsoil or other plant growth material are segregated, shall be marked.
(2) If soil horizons are removed and stored separately, each soil horizon stockpile shall have a separate and appropriately marked sign.
(3) Placement and quantity of markers shall be sufficient to clearly define the stockpiles.
(4) Markers shall remain in place until the material is removed.

Section 6. Safety Barriers and Warning Sign Above Highwalls. (1) A safety barrier and warning signs shall be installed and maintained near the top of an exposed highwall that is more than fifteen (15) feet in height. The barrier shall be adequate in type, size, and location, to reasonably restrict or impede unauthorized or unintentional access to the immediate vicinity of a dangerous highwall by vehicles, persons walking, or livestock, and shall be approved by the cabinet on a case by case basis. The cabinet may waive the requirements of this section if the cabinet determines that the area above the highwall is not reasonably accessible or that entering the area and constructing the barrier would cause excessive environmental damage.
(a) The barrier shall be located at least twenty (20) feet from the top of the highwall, or from any unstable ground at the top of the highwall.
(b) The barrier shall be a durable structure of concrete, metal, stone, or combination. If the barrier is constructed of individual boulders, they shall each weigh at least 1,000 pounds.
(c) The barrier shall be at least three (3) feet in height.
(d) The warning signs shall:
1. Be securely affixed to the safety barrier;
2. Be spaced not farther apart than 100 feet along the barrier;
3. Be clearly visible and readable from a distance of at least twenty (20) feet; and
4. Clearly indicate the nearby existence of a highwall that creates a danger of serious injury or death from falling.
(2) Mineral operations existing on December 13, 2002 shall have two (2) years to comply with this section.

Section 7. Safety Barrier and Warning Signs at Permit Boundary. (1) If the permit area contains an exposed highwall that is more than fifteen (15) feet in height, safety fencing and warning signs shall be installed and maintained between the highwall and the boundary of the permit area.
(a) The fencing shall be adequate in type, size, and location, to reasonably make persons aware of the restriction and provide some impedance to unauthorized or unintentional access to the permit area by vehicles, persons walking, or livestock. The fencing shall:
1. Be at least two (2) strands of galvanized steel wire not smaller than ten (10) gauge by US Steelwire gauge or not less than one-eighth (1/8) inch in diameter;
2. Be at least four (4) feet in height; and
3. Be clearly visible by warning signs.
(b) The warning signs shall:
1. Be securely affixed to the fence;
2. Be spaced not farther apart than 250 feet along the fence;
3. Be clearly visible and readable from a distance of at least twenty (20) feet; and
4. Clearly indicate that the permit area contains an exposed highwall that creates a danger of serious injury or death from falling.
(2) The cabinet may approve, on a case by case basis, the use of a constructed landscape barrier instead of the fencing required under subsection (1) of this section, if the cabinet determines the landscape barrier will be effective in achieving the safety purposes of this section.
(3) Mineral operations existing on December 13, 2002 shall have two (2) years after December 13, 2002 to comply with this section.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: April 11, 2003
FILED WITH LRC: April 11, 2003 at 2 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended at ARRS, August 7, 2003)

405 KAR 5:038. Blasting.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS [Chapter 13A], 350.028, 350.029, 350.240, 350.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for [relate to] the use of explosives for noncoal mineral operations.

Section 1. General. (1) If blasting is planned for the proposed mineral operation, it shall be conducted in accordance with the laws and administrative regulations of the Kentucky Department of Mines and Minerals, 805 KAR Chapter 4.
(2) If flyrock falls outside the permit boundary, or if property damage occurs outside of the permit boundary, as a result of flyrock, then appropriate mitigative measures shall be taken, as determined by the cabinet based upon the nature and scope of the environmental and property damage [as determined by the cabinet, shall be taken].
(3) Surface or underground blasting shall not be conducted on a mineral operation unless the requirements of Sections 2 through 4 of this administrative regulation regarding blasting signs, preblasting surveys, and public notice of blasting schedules, have been met.

Section 2. Blasting Signs. Warning signs shall be posted if explosives are to be used, in accordance with 405 KAR 5:035.

Section 3. Preblasting Survey. (1)(a) This section shall apply to new permits issued after December 13, 2002. This section shall also apply to amendments to permits existing on December 13, 2002, but shall not apply to a dwelling or other structure if the permittee has already conducted blasting operations within 1,500 feet of the dwelling or other structure prior to December 13, 2002.
(b) At least thirty (30) days before initiation of blasting, the permittee shall notify, in writing, all residents or owners of dwellings or other structures located within 1,500 feet of the proposed blasting area how to request a preblasting survey in accordance with subsection (2) of this section.
(2) A resident or owner of a dwelling or other structure within 1,500 feet of the proposed blasting area may request a preblasting survey. This request shall be made in writing directly to the permittee or to the cabinet which shall promptly notify the permittee. The permittee shall promptly conduct a preblasting survey of the dwelling or structure. If a structure is renovated, modified, or added to subsequent to a preblasting survey, then, upon request of such additions and renovations shall be performed in accordance with this section.
(3) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical conditions that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines and utilities, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface condition and readily available data unless additional data are specifically
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required by the cabinet.

(4) A written report of the survey shall be promptly prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. If the resident or structure owner or his representative accompanies the surveyor, the report shall contain the name of the person. Copies of the report shall be promptly provided to the person requesting the survey and to the cabinet. If the person requesting the survey disagrees with the results of the survey, he may submit[1] a written, to both the permittee and the cabinet, a detailed description of the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the preblasting survey and to ensure compliance with Sections 1 and 3 of this administrative regulation [the requirements of this regulation].

(5) A survey requested more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting.

Section 4. Public Notice of Blasting Schedule. (1) Blasting schedule publication.

(a) If a new permit is issued after December 13, 2002, or if no blasting has been conducted prior to December 13, 2002 on an existing permit, the permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days, before beginning a blasting program in which blasts that use more than five (5) pounds of explosives or blasting agents are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site. If blasting has been conducted prior to December 13, 2002 on an existing permit, the permittee shall publish a blasting schedule in accordance with this paragraph if the permittee changes the types or patterns of warning or all-clear signals being used.

(b) Copies of the schedule shall be distributed in the time frame specified in paragraph (a) of this subsection to the Noncoal Review Branch of the Division of Field Services, to local governments and public utilities, and to each residence within 1,500 feet of the blasting site described in the schedule.

(c) The permittee shall revise, republish, and redistribute the schedule at least ten (10) days, but not more than thirty (30) days, before blasting if the permittee changes the types or patterns of warning or all-clear signals being used.

(2) Blasting schedule contents. The blasting schedule shall contain at a minimum:

(a) The name, address, and telephone number of the permittee;
(b) Identification of the specific areas in which blasting will take place;
(c) Identification of the days and time periods when explosives are expected to be detonated;
(d) Identification of the methods to be used to control access to the blasting area; and
(e) Identification of the types and patterns of audible warnings and all-clear signals to be used before and after blasting.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: April 11, 2003
FILED WITH LRC: April 11, 2003 at 2 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended at ARRS, August 7, 2003)

405 KAR 5:045. Protection of environmental resources.

RELATES TO: KRS 350.010(2), 350.240, 350.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 350 in pertinent part, requires the cabinet] to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes [see note] provisions for the protection of fish and wildlife values and other environmental features.

Section 1. Definition. "Valid existing rights" means:

(1) Except for haul roads:

(a) Property rights in existence on December 13, 2002, that were created by a legally-binding conveyance, lease, contract, or other instrument which authorizes the applicant to produce the mineral and the person proposing to conduct a mineral operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before December 13, 2002, all state and federal permits necessary to conduct mineral operations on those lands, such as applying for the permits; or

2. Demonstrates to the cabinet that the mineral is both needed for, and immediately adjacent to, an ongoing mineral operation for which all permits were obtained prior to December 13, 2002; or

(b) Any other road in existence as of December 13, 2002.

Section 2. Environmental Resources. (1) A [any] mineral permittee shall, to the extent possible, minimize disturbances and adverse impacts to fish and wildlife[1] and related environmental values.

(2) No mineral operation shall be conducted which will result in the adverse effects to or modification of a wetland without the appropriate permits and approvals.

(3) Unless the federal or state agency with management responsibility for the area has consented to the mineral operation in writing, no mineral operation shall be conducted within the boundaries of the National Park Service; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; National Recreational Areas; state nature preserves dedicated pursuant to KRS 146.410; or state wildlife management areas; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. Sec. 1276 (a)), or rivers or study river corridors as established in any guidelines pursuant to that Act; rivers and their corridors designated under the state Wild Rivers Act pursuant to KRS Chapter 146; or similar public lands.

(4) No land within 100 feet of an intermittent or perennial stream shall be disturbed by mineral operations, except if [where] appropriate permits or approvals have been obtained.

(5) The cabinet shall prohibit a [any] mineral operation on a natural hazard land if necessary to protect the health, safety, or welfare of people, property, or the environment.

(6) The cabinet shall not issue permits that are inconsistent with Sections 1 through 3 of this administrative regulation.

Section 3. [Out of State] Other Lands Where Mineral Operations Prohibited or Limited. Except for operations which existed on December 13, 2002, unless the required approvals or waivers have been obtained, and subject to valid existing rights, a noncoal mineral operation shall not be conducted on:

(1) Lands within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building; [1]

(2) Lands within 100 feet, measured horizontally, of a cemetery; except that cemeteries may be relocated if authorized by KRS 381.755. [Applicable state law or administrative regulations]
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(3) Lands within 300 feet, measured horizontally, from an occupied dwelling, unless the owner of the dwelling has provided a valid written waiver that consents to noncoal mineral operations closer than 300 feet and specifies an allowable distance closer to the dwelling.

(Exception to subsection shall not apply if the part of the mineral operation that is within 300 feet of the dwelling is a haul road or access road that connects with an existing public road on the side of the public road opposite the dwelling."

(b) A valid waiver obtained prior to December 13, 2002 shall be valid for the purposes of this subsection.

(c) The waiver shall be knowingly and intelligently executed, and shall be separate from a lease or deed unless the lease or deed contains an explicit waiver, in which case a copy of the lease or deed shall be included with the permit application.

(d) The waiver shall be clear that the owner and signator had the legal right to deny the mineral operation within 300 feet of the dwelling and knowingly waived that right.

(e) The waiver shall act as consent to the mineral operation within 300 feet of the dwelling, but not closer to the dwelling than the distance specified in the waiver.

(f) A valid waiver obtained from a previous owner shall remain effective for a subsequent owner who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been previously filed in public property records pursuant to state law, or if prior to the date of the purchase of the mineral operation has proceeded to within the allowable distance specified in the waiver.

(4) Lands within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except where mine access roads or haulage roads join the right-of-way). The cabinet may allow areas within 100 feet to be affected or may allow the public road to be closed or relocated, if the cabinet [provided that, the cabinet shall]:

(a) Requires [Require] the applicant to obtain any necessary approval of the governmental authority with jurisdiction over the public road;

(b) Provides [Provide] opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(c) Publishes [Publish] notice in a newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county of the affected area at least two weeks before the public hearing; and

(d) Makes [Make] a written finding within thirty (30) days after the hearing or after any public comment period ends if no hearing is held, that the basis of information received at the public hearing as to whether the interests of the public and affected landowners will be protected. [No] Mining shall not be allowed within 100 feet of the outside right-of-way line of a road. A road shall not [nor may a road] be relocated or closed unless the cabinet determines that the interests of the public and affected landowners will be protected.

(e) Federal lands within the boundaries of any national forest, unless specifically approved by the Secretary of the Interior.

Section 4. [34] Agency Assistance in Review. [1] If the cabinet is unable to determine whether the proposed mineral operation is located within the distances or boundaries of any of the lands identified in Sections 1 or 2 of this administrative regulation, the cabinet shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the agency that it shall respond in writing within thirty (30) days of receipt of the request.

(2) The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of notification in which to respond.

(3) The cabinet, upon request by the appropriate agency, shall grant an extension to the thirty (30) day period of an additional thirty (30) days. If no response is received within the thirty (30) day period or within the extended period granted, the cabinet may make the necessary determination based upon the information it has available.

Section 5. [41] Valid Existing Rights. [1] Except for haul roads, "valid existing rights" means property rights in existence on December 13, 2002, that were created by a legally-binding conveyance, lease, contract or other instrument which authorizes the applicant to produce the mineral and the owner proposing to conduct a mineral operation on the lands; either:

(a) Had been validly issued or had made a good faith effort to obtain, or on or before December 13, 2002, all state and federal permits necessary to conduct mineral operations on those lands; application for the permits being deemed to constitute good faith efforts to obtain the permits; or

(b) Can demonstrate to the cabinet that the mineral is both needed for and immediately adjacent to, an ongoing mineral operation for which all permits were obtained prior to December 13, 2002.

(2) For haul roads, "valid existing rights" means:

(a) A recorded right-of-way, recorded easement, or a permit for mineral haul road recorded as of December 13, 2002; or

(b) Any other road in existence as of December 13, 2002.

(3) "Valid existing rights" shall (does) not mean the mere expectation of a right to mineral operations or the right to conduct underground mineral mining.

(4) Interpretation of the terms of the documents relied upon to establish existing rights shall be based upon the laws of Kentucky.

(5) A determination that the mineral is "needed" shall be based upon, but not be limited to, a finding that additional production originating on adjacent land is necessary to preclude a financial hardship on the mineral operation measured by standard accounting and financial procedures, provided that:

(a) A fair rate-of-return on invested capital is not achievable on existing permitted land;

(b) A less than fair rate-of-return on invested capital is attributable to this administrative regulation; and

(c) The permittee can establish that the adjacent unpermitted land is part of the permittee's mining plan.

(6) If an area comes under the protection of Sections 1 or 2 or 3 of this administrative regulation after December 13, 2002, valid existing rights shall be found if, on the date the protection comes into existence, a validly authorized mineral operation exists on that area.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: April 11, 2003
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended at ARRS, August 7, 2003)

405 KAR 5:053. Replacement of water supply.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028
authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 350 n pertinent part, requires the cabinet] to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.028 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use
of mined land. This administrative regulation establishes [sale for] provisions for replacement of water supplies that are adversely affected by noncoal mineral operations.

Section 1. Applicability. This administrative regulation shall apply to noncoal mineral operations conducted under permits issued after December 13, 2002 and to noncoal mineral operations existing on December 13, 2002.

Section 2. Replacement of Water Supply. (1)(a) If the cabinet receives a citizen's complaint that the person's water supply has been adversely impacted by the activities of a permittee named in the complaint, the cabinet shall promptly notify the permittee of the complaint and conduct an investigation to determine the validity of the complaint.

(b) The cabinet may require the permittee to obtain geologic, hydrologic, and other relevant information necessary to determine if the water supply has been adversely impacted. All relevant information available to the cabinet shall be used to determine the impact of mining activities upon the water supply.

(2) The permittee or operator shall promptly replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, if the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the noncoal mineral operations. Reimbursement of a water supply is required under this subsection the permittee shall:

(a) If the water supply to be replaced is a domestic supply, provide water supply on both a temporary and permanent basis in accordance with this paragraph:

1. Within forty-eight (48) hours after receiving notice from the cabinet that the water supply was adversely impacted by the mineral operation, provide drinking water on an emergency basis;
2. Within two (2) weeks after receiving notice from the cabinet that the water supply was adversely impacted by the mineral operation, provide a temporary water supply connected to the existing plumbing, if any, that provides water for all ordinary household purposes including drinking, cooking, bathing, sanitation, and laundry, and drinking water for poultry, livestock, and domestic animals, and water for noncommercial domestic agricultural and horticultural activities;
3. Within two (2) years after receiving notice from the cabinet that the water supply was adversely impacted by the mineral operation, provide a satisfactory permanent water supply;

(b) If the water supply to be replaced is other than a domestic supply, provide water supply on both a temporary and permanent basis on a schedule established by the cabinet on a case-by-case basis;

(c) Provide water supply equivalent to premining quantity and quality;

(d) Provide an equivalent water delivery system; and

(e) Pay operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest. Upon agreement by the permittee and the owner of interest, the obligation to pay the excess operation and maintenance costs may be satisfied by:

1. A one (1) time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest;

2. A uniform series of payments whose present worth equals or exceeds the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest; or

3. Other reasonable compensation arrangements which fairly compensate the owner for the future operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest.

(3) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed, if this approach is selected, written concurrence shall be obtained from the owner of interest.

(4)(a) If contamination, diminution, or interruption to a water supply protected under subsection (2) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost to replace the protected water supply, until the replacement is completed. If replacement is completed within ninety (90) days of the occurrence, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete the replacement within ninety (90) days.

(b) If the permittee demonstrates to the satisfaction of the cabinet that he has a liability insurance policy that covers the replacement, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the replacement. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 5:080.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required replacement.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: April 11, 2003
FILED WITH LRC: April 11, 2003 at 2 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended at ARRS, August 7, 2003)

405 KAR 5.060. Handling of materials.

RELATES TO: KRS 350.100(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS [Chapter 13A], 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 350 in pertinent part] to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes [sale for] provisions concerning backfilling and grading, handling of wastes, handling of acid or toxic-forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.

Section 1. Backfilling and Grading. (1) Backfilling and grading shall be conducted in accordance with the requirements for contemporaneous reclamation in 405 KAR 5.075.

(2)(a) Nothing in this section shall be construed to require abandonment and reclamation of a road if:
1. The road is stable and is suitable for its intended use;
2. The road is turned over to the landowner for maintenance and use consistent with the postmining land use, or with consent of the landowner is turned over to a government agency for maintenance and public use; and
Section 2. Waste Materials. (1) The conduct of mining, and the handling of refuse and other mining wastes shall be done in such a way as to reduce adverse effects in the area and to protect the public and adjoining landowners from damage to their lands, to streams, and to underlying sources of water. (2) No waste material, including spoil, shall be placed in a manner that would interfere with the normal functioning of a natural drainage system or would otherwise create a hazard to the public or to the environment.

3. Retention of the road as a permanent road is approved in the permit.

(b) Nothing in this section shall be construed to prohibit a permanent pit impoundment at a mineral operation if, in the permit, the pit impoundment is approved to be the postmining land use or the impoundment is approved as being consistent with the approved postmining land use.

(c) [Nothing in this section shall be construed to prohibit the removal of overburden material, other than topsoil, from the permit area as a part of a lawful commercial transaction if the removal is proposed and described in the permit application and approved in the permit amendment issued after December 13, 2002, and if necessary to maintain the natural slope of the area near the pit site as required in an original permit or a permit amendment issued after December 13, 2002.

3. If an area was under a valid permit for a noncoal mineral operation on December 13, 2002, provisions of the permit applicable to that area on December 13, 2002 shall supersede the requirements of this subsection if the area is included in an original permit or a permit amendment issued after December 13, 2002.

(a) [Except for limestone, sand and gravel mining operations, all] Areas disturbed after December 13, 2002 shall be returned to their approximate original contour, except areas identified and approved in the permit as being areas where:

(1) it is technically or economically feasible to achieve the approximate original contour because of the volume of spoil materials available after mining that will not be sufficient to complete backfilling and grading to the approximate original contour, or

(2) Achieving the approximate original contour would be inconsistent with the approved postmining land use.

(b) Postmining land slopes may vary from original slopes in the permit if approved by the cabinet on a case-by-case basis to facilitate the approved postmining land use.

4. If an area was under a valid permit for a noncoal mineral operation on December 13, 2002, provisions of the permit applicable to that area on December 13, 2002 shall supersede the requirements of this subsection if the area is included in an original permit or a permit amendment issued after December 13, 2002.

(a) [Spoil] generated after December 13, 2002 shall be placed in the pit, except that spoil shall not be required to be placed at a location in the pit if mineral extraction at that location has not been completed.

(b) To the extent practicable, spoil placed in the pit shall be used to reduce the highwall.

(c) If spoil is placed temporarily on the slope outside the pit, it shall be placed on stable areas approved in the permit for temporary storage of spoil where the natural land slope is ten (10) degrees or less.

(d) Spoil shall not be permanently placed outside the pit unless it is a part of a approved permit or necessary to facilitate the approved postmining land use or necessary to construct berms or other approved permanent structures. The spoil shall be placed on stable areas where the natural land slope is ten (10) degrees or less.

5. If an area was under a valid permit for a noncoal mineral operation on December 13, 2002, provisions of the permit applicable to that area on December 13, 2002 shall supersede the requirements of this subsection. An area shall be subject to the requirements of this subsection if the area is included in an original permit or a permit amendment issued after December 13, 2002.

(a) Eliminate all highwalls, spoil piles, and depressions, created after December 13, 2002, except limestone operations shall comply with subparagraphs 1 and 2 of this paragraph.

(b) A highwall created by a limestone mining operation under a new permit issued after December 13, 2002 or an amendment to a permit existing on December 13, 2002 shall be eliminated by backfilling, and by blasting if necessary, unless the permittee is constrained in the permit application to the satisfaction of the cabinet that complete elimination is not technically feasible and the extent to which partial elimination is technically feasible, in which case the highwall shall be eliminated to the extent approved in the permit application. The permittee shall not be required to remove material by blasting or other methods for more than fifty (50) feet horizontally at the top of the final production highwall to eliminate or reduce the slope.

2. If highwall reduction or elimination is to be achieved by the removal of overburden up to the maximum of fifty (50) feet horizontally as required in subparagraph 1 of this paragraph then the slope of the surface above the highwall shall be approximately thirty (30) degrees, except that if the natural slope of the terrain above the highwall is greater than twenty (20) degrees then no further highwall reduction is required.

(b) Place all backfill materials at a slope of thirty (30) degrees or less.

(c) Ensure a long-term static factor of safety of at least one and three-tenths (1.3) for all portions of the reclaimed land.

(d) Achieve a postmining slope that does not exceed the angle of repose and that prevents slides.

(e) Minimize erosion and adverse effects on surface and ground water both on and off the site.

(f) Support the approved postmining land use. [General statement concerning backfilling. All overburden that is not placed in approved excess spoil files shall be placed back in existing piles and graded.]

(g) [Surface drainage.

(a) Natural drainways in the area affected by the mineral operation shall be kept free from overburden except if such drainways are placed in such manner as to be free from overburden. Drainage on the site shall be provided for all natural drainages, proper drainage structures shall be provided, and sufficient water retaining structures, silt control structures, and diversion ditches, constructed as approved by the cabinet in accordance with 405 KAR 5:030, shall be placed to control all runoff from the mineral operation before the work begins. These structures shall be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet in accordance with 405 KAR 5:030.

(b) Any water accumulating on a bench or similar area where the drainage is off the mineral operation shall be pumped or piped into sediment control structures.

(c) The moving of overburden to release accumulated water shall be prohibited unless a drainage can be constructed with the approval of the cabinet. The cabinet may make this approval if the cabinet finds that the release is necessary to prevent the development of instability, and the release will not cause additional environmental harm.

(d) If the mineral operation produces a highwall, at least one (1) suitable access shall be provided to lands above the highwall within each four thousand (4,000) feet of distance along the highwall. In addition, access shall be provided as necessary so no landowner is prevented access to his property.

(e) Spoil or overburden removed shall be placed, graded, and stabilized so that soil erosion, surface disturbance, and stream sedimentation will be minimized.

(f) All grading shall be kept current and shall be completed before equipment pertinent to the mineral operation is moved from the site unless approved, in writing, by the cabinet’s inspector, after making a finding that removal of the equipment is not in conflict with the approved method of operation and will not impede compliance with contemporaneous reclamation requirements.

(g) If conditions develop in the mineral operation so that the approved reclamation plan and backfilling and grading plan cannot be carried out as planned, modifications of the plan shall be submitted by the mineral operator to the cabinet for approval in accordance with 405 KAR 5:030.

Section 2. Waste Materials. (1) The conduct of mining and the handling of refuse and other mining wastes shall be done in such a way as to reduce adverse effects in the area and to protect the public and adjoining landowners from damage to their lands, to streams.
Section 4. Topsoil Handling. (1) General requirements.
(a) If practicable, all topsoil or subsoil to be saved for redistribution, specified under subsection (2) of this section, shall be removed as a separate layer or layers from the area to be disturbed and shall be segregated from other materials.
(b) If practicable, after removal, these materials shall be distributed immediately to backfill areas, or otherwise stockpiled.
(c) After redistribution, if the topsoil becomes encrusted and hard, it shall be scarified prior to seeding.

(2) Soil removal. For areas where topsoil is to be removed and saved as a plant growth medium:
(a) Vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared. Herbaceous vegetation and other small plant forms which will add to the organic constituency of the topsoil, but do not interfere with topsoil salvaging, may be retained along with the topsoil.
(b) All topsoil present in the area to be disturbed shall be removed and segregated for redistribution.

1. If less than six (6) inches of topsoil is present, then at least the upper six (6) inches of soil shall be removed and segregated for redistribution, except where less than six (6) inches of soil is present.

2. If [where] less than six (6) inches of soil is present, whatever soil and subsoil is available, at the area to be disturbed, shall be removed and segregated for redistribution.

(3) Soil stockpiling.
(a) Soil materials removed pursuant to subsection (2) of this section shall be stockpiled only if it is impractical to promptly redistribute the materials on regraded areas.
(b) Stockpiled soil shall be selectively placed on stable areas, outside of water drainways and shall:
   1. Be protected from wind and water erosion through the seeding of quick cover grasses or legumes and application of mulch;
   2. Be seeded with perennial grasses and legumes if the soil is to be stockpiled for more than two (2) years; and
   3. Be protected from unnecessary compaction.

(4) Soil amendments.
(a) Lime shall be applied to redistributed topsoil in an amount to obtain a buffer pH of six and four-tenths (6.4).
(b) Adequate fertilizer shall be applied to redistributed topsoil. At a minimum, 100 pounds of nitrogen (N) and 100 pounds of phosphorus (P₂O₅) shall be applied per acre.
(c) Areas where topsoil has been redistributed shall be seeded with quick cover and permanent grasses and legumes as soon as possible during first normal period of favorable planting.

(5) Suitable methods or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

Section 5. Disposal of Excess Spoil. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner:
(a) (b) Minimize the adverse effects of leachate and surface run-off from the fill on surface and groundwater;
(b) Ensure mass stability and prevent mass movement during and after construction; and
(c) Ensure that the fill will be suitable for reclamation and revegetation, compatible with the natural surroundings and the approved postmining land use.
(2) Location. [If possible] placement in pits shall be the preferred location for disposal. Otherwise, the disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements upon above a natural terrace, bench, or berm if this would place provides additional stability and prevents mass movement.
(3) Placement in pits. On a case-by-case basis, the cabinet may waive all or part of the requirements of subsections (4) through (7) of this section if [where] spoil is placed in pits where there is no potential for mass movement or substantial erosion.
(4) Design certification. (a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.
(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5).
(5) Stability. (a) Stability analyses shall be performed by a qualified, registered professional engineer.

1. The cabinet shall approve parameters used in the stability analyses if the parameters are based upon adequate investigations of foundation and fill material, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of the materials.
2. The cabinet may approve parameters based upon data obtained from sources other than laboratory analyses of the materials if that data would yield results which ensure compliance with the stability requirements of KAS 5.060.
3. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures. [Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of the materials. If approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this administrative regulation. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.]
(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8:1v (thirty-sixty-three (36) percent) or a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock), rock toe buttresses, or a combination of these shall be constructed to ensure stability of the fill.
(6) Placement of excess spoil.
(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and redistributed in accordance with Section 4 of this administrative regulation, if approved by the cabinet, in
accompany with 405 KAR 5:030 vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lift of a thickness approved by the cabinet to ensure stability based on site specific conditions; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material.

(c) The final configuration of the fill shall be suitable for the approved postmining land use.

2. The fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface run-off from the top surface of the fill shall not be allowed to flow over the outsole of the fill. The outsole of the fill shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion, in accordance with 405 KAR 5:030.

3. Terrace benches may be constructed on the outsole of the fill. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outsole between terrace benches shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Run-off shall be collected by a ditch along the intersection of each terrace bench and the outsole. This ditch shall route run-off to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved post-mining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion, in accordance with 405 KAR 5:030.

(d) Impoundments shall not be allowed on the fill.

(e) Drainage control. The design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements for fills that are not hollowfils if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainways, or seepage areas and because seepage of water due to precipitation will not adversely affect the stability of the fill. [in no case shall] Surface run-off from above the fill shall not be diverted through or under the fill.

(b) Surface water run-off from the area above the fill shall be diverted away from the fill and into stabilized diversion channels. Surface run-off from the fill surface shall be diverted to stabilized channels off the fill. Diversions associated with excess spoil fills and appurtenant structures shall be designed and maintained to safely pass the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event, except that diversions associated with hollowfils and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and noncorrosive-forming rock; shall be free of coal, clay, and nontoxic material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices. For hollowfills a subsurface drainage system for the fill shall be constructed in accordance with the following:

1. Be installed along the natural drainways;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(d) The cabinet may approve diversions located on fill material if necessary due to topography or configuration of the fill, if the cabinet determines that there will be no adverse impacts to the excess spoil fill, the public health and safety, and the environment.

(e) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

Section 6. Additional performance standards for mineral operations on slopes of more than twenty (20) degrees.

1. The mineral permits shall prevent the following materials from being placed or allowed to remain on the downsteep:
   (a) Spoil;
   (b) Waste materials, including waste mineral matter;
   (c) Debris, including that from clearing and grubbing of haul road construction; and
   (d) Abandoned or disabled equipment.

2. Nothing in this section shall prohibit the placement of material in road embankments located on the downsteep, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapter 5 and the material is moved and placed in a controlled manner.

3. Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not delaminate the stable condition of the backfilled area. Woody and woody and material may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

4. Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: July 10, 2003
FILED WITH LRC: July 11, 2003 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended at ARRS, August 7, 2003)

405 KAR 5:075. Contemporaneous reclamation.

RELATES TO: KRS 350.010(2), 350.240, 350.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes [what] performance standards for timing of reclamation.

Section 1. General. Reclamation operations, including backfilling, grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, mulching, and revegetating of all land that is disturbed by noncoal mineral operations, and other activities as required by the approved reclamation plan, shall occur as contemporaneously as practicable with mining operations and in accordance with Sections 1 through 6 of this administrative regulation.

Section 2. Backfilling and Grading. (1) Backfilling and grading operations shall proceed as concurrently with mining operations as possible and in accordance with the requirements of this section, except that specific time criteria set forth in the approved plan for
backfilling and grading shall take precedence over corresponding criteria in this section.

(2) The approved backfilling and grading plan may specify time criteria less restrictive than those set forth in this section, and may allow or require one (1) pit per permit area, if the permittee has demonstrated through detailed written analysis in the permit application that other criteria or additional pits are essential to the proposed mining and reclamation operations, and the cabinet has determined that use of the requested criteria or additional pits will not likely cause adverse environmental impacts.

(3) On lands where the method of mineral operation produces a bench or where the surface mining is done on the contour, grading shall be kept current with the removal of the mineral, which shall mean within ninety (90) days following the mineral removal, except if a period exceeding ninety (90) days is approved pursuant to subsection (1) or (2) of this section. Where special conditions warrant, these requirements may be modified by the cabinet.

Section 3. Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilization, other soil preparation, seeding, planting, and mulching of that area shall be completed as soon as possible in a manner consistent with the approved plans for topsoil handling and revegetation in accordance with 405 KAR 5:060, Section 4 and 405 KAR 5:070.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) of this section may exceed thirty (30) calendar days only if [when] specifically authorized in the approved plans for topsoil handling and revegetation or if [when] authorized in a deferment pursuant to Section 5 of this administrative regulation.

Section 4. Final Reclamation. Final reclamation of all lands affected by a noncoal mineral operation shall be completed within 180 days after completion of mining.

Section 5. Deferrals. (1) The cabinet may approve deferment of the time criteria in Sections 2 through 4 of this administrative regulation for contemporaneous reclamation requirements on specific areas if the permittee can demonstrate that the deferment is necessary to address at least one (1) of the following:

(a) Adverse conditions including weather, labor, and other conditions clearly beyond the permittee’s control.

(b) Mineral marketing problems.

(2) A reclamation deferment may be approved for a period reasonably related to the specific conditions justifying the deferment. A deferment shall not extend beyond the expiration date of the permit. The cumulative period of deferment under this section shall not exceed 180 days.

(3) The applicant shall have the burden of establishing the need for a deferment. The applicant shall demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment. The permittee shall continue to comply with the time limits of the contemporaneous reclamation requirements until the deferment is issued.

(4) If a permittee wishes to request deferment, a “Request for Noncoal Reclamation Deferral, NCR-15” shall be submitted to the cabinet. [An application form for deferment shall be in the form prescribed by the cabinet] Approval of a deferment request shall be made in writing by the director of the Division of Field Services. The approval shall state that the deferment is justified and that no environmental damage is expected to occur during the period of deferment.

(5) Application for a deferment pursuant to subsection (1)(a) of this section for adverse conditions shall include documentation of the adverse conditions beyond the permittee’s control and a demonstration of impossibility of conducting contemporaneous reclamation in a timely manner due to those conditions. Upon a successful demonstration that the adverse conditions exist, the department may grant a reclamation deferment for a maximum of thirty (30) days. At least thirty (30) days prior to the expiration of a deferment the permittee may request, in a detailed written report, an extension of the deferment, again stating the reason for the request and providing any appropriate additional documentation. The cabinet may extend the deferment for a maximum of thirty (30) days. The permittee may request further extensions in writing, and the cabinet may grant the extensions for a maximum of thirty (30) days each if it finds the requests to be justified.

(6) Application for a deferment pursuant to subsection (1)(b) of this section for mineral marketing problems shall include a demonstration of the need for the deferment, including documentation of the mineral marketing problem. Upon a successful demonstration of the need for the deferment, the cabinet may grant a reclamation deferment for a maximum of ninety (90) days. At least seven (7) days prior to the expiration of a deferment, the permittee may request, in writing, an extension of the deferment, again stating the reason for the request and providing any appropriate additional documentation. The cabinet may extend the deferment for a maximum of ninety (90) days.

Section 6. Temporary Cessation of Operations. (1) Notice required. Prior to a temporary period of inactivity in which there is no extraction of minerals on the permit area, no processing of minerals extracted on the permit area, and no transportation from the permit area of minerals extracted on the permit area, which the permittee intends to last for ninety (90) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond ninety (90) days, the permittee shall provide written notice to the cabinet that temporary cessation is anticipated. The notice shall state what extent equipment will be removed from the site during the temporary cessation, and shall state the specific date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessation, equipment and facilities necessary for environmental monitoring or for compliance with performance standards shall be made secure to the extent practicable.

(4) During temporary cessation the permittee may remove bulldozers, front-end loaders, drill rigs, water trucks, and other mobile, self-propelled equipment from the permit area, but shall not remove buildings, crushers, conveyors, or other similar portable, semi-permanent or permanent equipment.

(5) If a temporary cessation is intended to last longer than twelve (12) months, or if a temporary cessation has lasted for twelve (12) months, the permittee shall file with the cabinet an additional bond amount that shall make the total bond amount equal to $3,000 per acre or fraction of an acre of surface disturbance for the entire permit area, except the minimum bond amount for the entire permit area shall be $10,000.

(6) Underground operations on which there is no mineral removal activity for a period of six (6) months shall construct temporary barricades of underground mine openings that shall be adequate to restrict unauthorized entry to the underground mine. [Contemporary Reclamation. (1) On lands where the method of mineral operation produces a bench or where the surface mining is done on the contour, grading shall be kept current with the removal of the mineral, which shall mean within ninety (90) days following the mineral removal. Where special conditions warrant, these requirements may be modified by the cabinet.

(2) On lands where the method of mineral operation is of the underburden type, the final reclamation of the site shall follow completion of mining within 180 days.

(3) On lands where the method of mineral operation is of the underground type, the final reclamation of the site shall follow completion of mining within 180 days.


(2) This material may be inspected, copied, [form may be reviewed] or obtained, subject to applicable copyright law, at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: April 11, 2003
405 KAR 5:080. Reclamation bond.

RELATES TO: KRS 350.010(2), 350.240, 350.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Natural Resources and Environmental Protection Cabinet [Chapter 13A in pertinent part] requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes [see note] provisions concerning when bond is required, bond amount and how it is to be paid, and bond forfeiture for noncoal mineral operations.

Section 1. Applicability. This administrative regulation shall apply to all existing and new noncoal mineral permits, and amendments, on and after December 13, 2002. [No reclamation bond shall be required except if the cabinet finds the mineral operation to be temporary, or finds that the applicant previously has not had a mineral operation in the Commonwealth of Kentucky with a compliance record acceptable to the cabinet.]

Section 2. Bond Amount. (1) Prior to issuance of a permit or amendment, the permittee shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet as a penalty in the amount determined under this subsection upon the acreage of surface disturbance.
(a) For a new permit issued after December 13, 2002 and amendments to the permit the bond amount shall be $3,000 per acre or fraction of an acre, except the minimum bond amount for the entire permit area shall be $10,000.
(b) If a valid permit existing on December 13, 2002 is not amended, the bond amount required by the cabinet prior to December 13, 2002 shall remain the bond amount for the permit area.
(c) If a permit existing on December 13, 2002 is amended, the bond amount shall be the amount required by the cabinet prior to December 13, 2002 and $3,000 per acre or fraction of an acre of each amendment, except the minimum bond amount for the entire permit area shall be $10,000.
(2) The cabinet may reduce the bond amount upon application by the permittee under 405 KAR 5:030 to delete acreage from the permit area if the acreage has not been affected by the noncoal mineral operation.
(3) The cabinet shall not release any monies pledged under a bond if:
(a) An action for revocation or suspension of the permit covered by the bond is pending;
(b) There is a pending action for forfeiture of the bond; or
(c) The permittee is currently in violation of 405 KAR Chapter 5 on the permit.
(4) The cabinet shall not release any monies pledged under a bond if the release would reduce the total remaining bond monies to an amount less than that necessary for the cabinet to:
(a) Achieve compliance with the requirements of KRS Chapter 350, 405 KAR Chapter 5, and the permit; and
(b) Complete the approved reclamation plan. [If a reclamation bond is required, pursuant to Section 1 of this administrative regulation, the mineral operator shall file, with the cabinet, a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the penal sum of $50,000 for each acre or fraction thereof, with a minimum bond of $5,000 for the permitted area.]
(2) A mineral permittee may request reduction of the required reclamation bond amount at any time if the mineral permittee's method of reclamation and operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and if the mineral operation complies with all applicable statutes and administrative regulations and the permit plan.

Section 3. Type of Payment. (1) Reclamation bond shall be either a surety bond or a cash bond which may include:
(a) Certificates of deposit;
(b) Letters of credit;
(c) Acceptable escrow accounts;
(d) A combination of these bonding methods.
(2) If a surety bond is filed, it shall [must] be accompanied by a power of attorney affidavit allowing the surety to act on behalf of the mineral permittee with respect to reclamation.

Section 4. Bond Forfeiture. (1) The cabinet shall have the authority to forfeit a bond if the mineral operation is not conducted in accordance with KRS Chapter 350, 405 KAR Chapter 5, and the permit plan approved by the cabinet, pursuant to 405 KAR 5:030 [the statutes, administrative regulations, and the permit plan approved by the cabinet].
(a) The entire bond may be forfeited and deposited in an appropriate account for use in the payment of all costs associated with the reclamation and restoration of the permit area to which the forfeited bond applies.
(b) For forfeiture of the bond is required, the cabinet shall send written notification to the permittee, either by certified mail, return receipt requested, to the mineral permittee and the surety holding the bond of the cabinet's decision. This notification shall:
1. Explain the reasons for the forfeiture;
2. Indicate the amount to be forfeited; and
3. Advise the mineral permittee and those responsible for the bond of their right to a hearing.

Section 5. Incorporation by Reference. [Bonding Forms] (1) The following material is [forms of bond] incorporated by reference:
(a) "Noncoal Performance Bond, NCR-9", February, 1992.
(b) "Letter of Credit, NCR-10", March, 1990.
(c) "Escrow Agreement, NCR-11", March, 1990.
(d) "Request for Bond Release, NCR-12", March, 1990.
(2) This material may be inspected, copied, [These forms may be reviewed] or obtained, subject to applicable copyright law, at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY C. LISTS, Secretary
APPROVED BY AGENCY: April 11, 2003
FILED WITH LRC: April 11, 2003 at 2 p.m.
Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the [twelve (12)-month] period beginning on the effective date of this administrative regulation [July 1, 2003] and ending June 30, 2004 [December 31, 2002] to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census implicit price deflator for construction shall be used in making these adjustments. The change in the deflator for the [twelve (12)-month] period ending June 30, 2004 [December 31, 2002], represents a 2.15 [3.35] percent increase.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the [twelve (12)-month] period beginning on the effective date of this administrative regulation [July 1, 2003] and ending June 30, 2004 [January 1, 2003 to December 31, 2002] as follows:

(1) The expenditure minimum of $8,381,594 [4,772,224] for capital expenditure shall be increased to $8,760,973 [4,831,594].

(2) The expenditure minimum of $8,381,594 [4,772,224] for major equipment shall be increased to $8,760,973 [4,831,594].

JOHN H. GRAY, Executive Director
MARICIA R. MORGAN, Secretary
APPROVED BY AGENCY: May 22, 2003
FILED WITH AGENCY: May 27, 2003 at 4 p.m.

CABINET FOR HEALTH SERVICES
Office of the Inspector General
(As Amended at ARRS, August 7, 2003)

902 KAR 20:014. Effect of previous denial or revocation on applications for a license to operate a health facility.

RELATES TO: KRS 216.2925, 216.010, 216.015, 216.040, 216.062, 216.050, 216.055, 216.105, 216.115, 216.120, 216.125

STATUTORY AUTHORITY: KRS 216B.042[1][a]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042[1][a] authorizes the Cabinet for Health Services to regulate the licensure of health facilities. This administrative regulation establishes a prohibition on the licensing of health facilities that are owned, all or in part, by entities that have held a significant financial interest in a health facility that has had its license to operate revoked or denied within the previous five (5) years.

Section 1. Definitions. (1) "Applicant" is defined by KRS 216B.015. [means the individual, shareholder, or legal entity who makes application for licensure of a Kentucky health care facility.]

(2) "Cabinet" is defined by KRS 216B.015. [means Cabinet for Health Services.]

(3) "Good standing" means a health care facility that is in substantial compliance with applicable administrative regulations and which is otherwise eligible for relicensure.

(4) "Significant financial interest" means lawful ownership of a health care facility, whether by share, contribution, or otherwise, in an amount equal to or greater than twenty-five (25) percent of total ownership of the health care facility.

Section 2. Requirement to Disclose Ownership of a Health Facility. (1) Each applicant for a license or relicensure shall disclose the name, address, and telephone number of each individual, shareholder, or legal entity, including but not limited to, corporation, limited liability company, limited partnership, or partnership, having a significant financial interest in the [licensed] health care facility.

(2) The licensee of a Kentucky health care facility shall immediately inform the Cabinet for Health Services, in writing, of the name, address, and telephone number of any individual, shareholder, or legal entity, including but not limited to, corporation, limited liability company, limited partnership, or partnership that acquires a significant financial interest in the health care facility.

Section 3. Effect of Previous License Revocation or Denial on
the issuance of a License to Operate a Health Facility. (1) The Cabinet for Health Services shall not issue a new health facility license to any individual, partnership, corporation, or legal entity, however named, that has held or previously held a significant financial interest in a Kentucky licensed health care facility that has its license denied or revoked within the five (5) year period preceding the filing of the application. This section shall not prohibit annual relicensure of any other existing facility owned or operated by the individual, partnership, corporation, or legal entity that was in operation and in good standing on the date of the final administrative order denying or revoking the license.

(2) An [44] individual, shareholder, or legal entity shall not acquire a significant financial interest in any licensed health care facility if that individual, shareholder, or legal entity previously held a significant financial interest in a Kentucky licensed health care facility that had its license denied or revoked within the preceding five (5) year period.

(3) Failure of the facility or any individual or legal entity operating the facility to comply with any provision in this section or Sections 1 or 2 of this administrative regulation may result in denial or revocation of existing Kentucky health facility licenses owned or operated by the individual or legal entity.

Section 4. Hearings. [44] A health care facility or applicant dissatisfied with a decision to deny or revoke a license under Section 3 of this administrative regulation may file a written request for a hearing with the Secretary of the Cabinet for Health Services. The request shall be received by the secretary of the cabinet within twenty (20) days of the date the health care facility or applicant receives notice of the decision to deny or revoke the license. Hearings under this section shall be conducted in accordance with KRS 216B.040 and 600 KAR 6:040.

PAMELA J. MURPHY, Inspector General
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: June 3, 2003
FILED WITH LRC: June 11, 2003 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department of Medicaid Services
Division of Member and Provider Services
(As Amended at ARRS, August 7, 2003)

907 KAR 1:011. Technical eligibility requirements.


STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid Program.

Section 1. Definitions. (1) "Child" means a person who:
(a) is under the age of eighteen (18); or
(b) is under age nineteen (19) if the person is:
(i) a full-time student in a secondary school; or
(ii) has a mental or physical handicap;
(iii) a student in a vocational or technical training program; or
(iv) a member of the Armed Forces of the United States;

4. if previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or
(b) has not attained nineteen (19) years of age as specified in
42 U.S.C. 1396a(f)(1).

(2) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:
(a) Death;
(b) Continued voluntary or involuntary absence;
(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or
(d) Unemployment of one (1) parent if both parents are in the home.

(3) "Minor teenage parent" means an individual who:
(a) has not attained eighteen (18) years of age;
(b) is not married; and
(c) has a minor child in his care.

(4) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in Section 5(12) of this administrative regulation.

(5) "Veteran" is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy. An individual receiving Title IV-E benefits, Supplemental Security Income, Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically needy individual. In addition, the following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation:

(1) A child in a foster family care or private nonprofit child caring institution dependent in whole or in part on a governmental or private agency;

(2) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(3) A pregnant woman;

(4) A child of unemployed parents;

(5) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(6) A family which correctly received Medicaid for three (3) of the last six (6) calendar months and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC;

(7) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards;

(8) A child (but not his parents) who:
(a) Would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996 and
(b) Meets the definition of Section 1(4) of this administrative regulation;

(9) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:
(a) The child:
1. Has not reached his first birthday; and
2. Resides in the household of the woman; and
(b) The woman remains (or would remain if pregnant) eligible for the assistance;

(10) Except as provided in paragraph (c) of this subsection, an individual in an institution meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income;

(b) Except as provided in paragraph (c) of this subsection, eligibility for a similar hospice participant or similar participant in a waiver project of home and community based services for the mentally retarded or the aged, blind or disabled shall be determined using the method established in paragraph (a) of this subsection;

(c) Eligibility of an institutionalized individual meeting appropriate patient status criteria whose gross income exceeds 300 percent of
the SSI benefit amount shall be determined by comparing the cost of
the individual's care to the individual's income;
(11) A qualified severely impaired individual as specified in 42
U.S.C. 1396a(a)(10)(A)(ii) and 1396d (to the extent the coverage
is mandatory in this state);
(12) An individual who loses SSI eligibility but would be eligible
for SSI benefits except for entitlement to or an increase in his child's
insurance benefits based on disability as specified in 42 U.S.C.
1383c;
(13) An individual specified in 42 U.S.C. 1383c who:
(a) Loses SSI or state supplementation payments as a result of
receipt of benefits pursuant to 42 U.S.C. 622(e) or (f);
(b) Would be eligible for SSI or SSP except for these benefits;
and
(c) Is not entitled to hospital insurance benefits under the Medi-
care program;
(a) A pregnant woman during the course of her pregnancy; and
(b) A woman who, while pregnant, is eligible for, has applied for,
and has received medical assistance, and who shall continue to be
eligible as though she were pregnant until the end of the month
containing the 60th day of a period beginning on the last day of her
pregnancy (meaning the day on which her child is born or the pregnancy
is otherwise terminated).

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled
Working Individuals, Specified Low-Income Medicare Beneficiaries
and Medicare Qualified Individuals (QI). (1) Coverage shall be ex-
tended to a qualified Medicare beneficiary as specified in 42 U.S.C.
1396a(a)(1)(E), subject to the income as shown in 907 KAR 1:640,
and resource limitations shown in 907 KAR 1:645, and for the scope of
benefits specified in 907 KAR 1:006. A qualified Medicare benefi-
ciary shall:
(a) Be eligible for and receiving Medicare Part A benefits;
(b) Be determined eligible for benefits as a qualified Medicare
beneficiary eligible individual effective for the month after the
month in which the determination is made; and
(c) Not be eligible for benefits as a qualified Medicare benefi-
ciary eligible individual;
(1) Retroactively; or
2. For the month in which the determination was made.
(2) A qualified disabled and working individual as defined in 42
U.S.C. 1396d(b) shall be eligible under Medicaid for payment of
his Medicare Part A premiums as established in 907 KAR 1:006.
(3) A specified low-income Medicare beneficiary as defined in 42
U.S.C. 1396a(a)(10)(E)(ii) shall be eligible under Medicaid for pay-
ment of the Medicare Part B premium.
(4) A Medicare qualified individual group 1 (QI-1) as established
in 42 U.S.C. 1396a(a)(10)(E)(ii) shall be eligible for payment of all
of the Medicare Part B premium.
(5) A Medicare qualified individual group 2 (QI-2) as established
in 42 U.S.C. 1396a(a)(10)(E)(ii) shall be eligible for payment of
that portion of the Medicare Part B premium attributable to home
health costs.

Section 5. Technical Eligibility Requirements. The technical
eligibility factors for a family or individual included as categorically
need under Section 2 of this administrative regulation or as medi-
cally needy under Section 3 of this administrative regulation shall be:
(1) A child in foster care, a private institution, psychiatric hospi-
tal, psychiatric residential treatment facility, or mental retardation
institution shall meet the definition in Section 1(1) of this administra-
tive regulation;
(2) Except as provided by Section 2 of this administrative regu-
lation, a pregnant woman shall be eligible upon medical proof of
pregnancy;
(3) At the time of application, unemployment relating to eligibility
of both parents and children shall be determined using the following
criteria:
(a) Employment of less than 100 hours per month, except that
the hours may exceed that standard for a particular month if:
1. The work is intermittent; and
2. The excess is of a temporary nature as evidenced by the fact
that the individual:
(i) Was under the 100 hour standard for the prior two (2)
months; and
(ii) Is expected to be under the standard during the next month;
2. Within twelve (12) months prior to application, a parent re-
ceived unemployment compensation; or
3. A parent is receiving or has been found ineligible for unem-
ployment compensation; and
(b) A parent shall not have refused suitable employment without
good cause as determined in accordance with 45 C.F.R.
233.100(a)(3)(ii);
(4) Subsection (3)(a) of this section shall not apply if a change is
made in a Medicaid case if a case is recertified;
(5) An aged individual shall be at least sixty-five (65) years of age;
(6) A blind individual shall meet the definition of blindness as
contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to retire-
ment, survivors, and disability insurance (RSDI) or supplemental
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security Income (SSI); (7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI; (8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection.

(a) The first transitional six (6) month benefit period shall begin [begin] with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:
   a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;
   b. Have a dependent child living in the home; and
   c. Meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall [meet the following conditions]:
   a. Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;
   b. Have a dependent child living in the home;
   c. Have gross income minus child care cost less than 150 percent of the federal poverty income level;
   d. Have met the reporting requirements less than 21st day of the fourth month, the seventh month, and the tenth month; and
   e. During the immediately preceding three (3) months, have a [the] caretaker relative who shall have been:
      (i) Employed; or
      (ii) If unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid Program in accordance with paragraph (c) of this subsection.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid Program in accordance with paragraph (c) of this subsection, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:
   1. The specified relative was out-of-town for the reporting month;
   2. An immediate family member living in the home was institutionalized or died during the reporting month;
   3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or
   4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form;

9. A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) or other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children Program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:
   1. Grandfather;
   2. Grandmother;
   3. Brother;
   4. Sister;
   5. Uncle;
   6. Aunt;
   7. Nephew;
   8. Niece;
   9. First cousin;
   10. [First cousin once removed;]
   11. [A relative of the half-blood;]
   12. [A preceding generation denoted by a prefix of:
      a. Grand;
      b. Great;
      c. Great-great;
      d. Great-great-great; or]

A stepfather, stepmother, stepbrother, or stepsister;
[a stepgrandparent or stepgrandfather;]

10. An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, in order to pay medical bills during the terminal illness;

11. Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this act to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.

12. The following citizenship and residency requirements shall be applicable:
   (a) To be eligible for Medicaid, an applicant or recipient shall be:
      1. A citizen of the United States;
      2. Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996 and is:
         (i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;
         (ii) Granted asylum pursuant to 8 U.S.C. 1158;
         (iii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
      112(i)(5) for a period of at least one (1) year;
      118(d)(5) an alien whose deportation is being withheld pursuant to 8 U.S.C. 1252(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
      (vi) Granted conditional entry pursuant to 8 U.S.C. 1153a(7), as in effect prior to April 1, 1980;
      (vii) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
      (viii) A battered alien pursuant to 8 U.S.C. 1541(c);
   (ix) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
   (x) On active duty other than active duty for training in the Armed Forces of the United States or who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
   (xi) The spouse or unmarried dependent child of an individual described in subclause (ix) or (x) of this clause or the unmarried surviving spouse of an individual described in subclause (ix) or (x) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;
   (xii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
   c. A qualified alien who entered the United States on or after August 22, 1996 and is:
      (i) Granted asylum pursuant to 8 U.S.C. 1158;
      (ii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
      (iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1252(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);
      (iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
   (v) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on
account of alienage; 
(vi) On active duty other than active duty for training in the 
Armed Forces of the United States and who fulfills the minimum 
active duty service requirements established in 38 U.S.C. 5303A(d); 
(vii) The spouse or unmarried dependent child of an individual 
described in subclause (v) or (vi) of this clause or the unremarried 
surviving spouse of an individual described in subclause (v) or (vi) of 
this clause if the marriage fulfills the requirements established in 38 
U.S.C. 1304; 
(viii) An Amerasian immigrant pursuant to 8 U.S.C. 
1612(a)(2)(A)(v); or 
(ix) An individual lawfully admitted for permanent residence 
pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of 
Social Security coverage; and 
2. A resident of Kentucky meeting the conditions for determining 
state residency under 42 C.F.R. 435.403. 
(b) A qualified or nonqualified alien shall be eligible for medical 
assistance under the following circumstances and conditions: 
1. The alien shall be qualified as a categorically needy recipient; 
2. The alien shall meet the income, resource and categorical 
requirements of the Medicaid Program; 
3. The alien has (or has had within at least one (1) of the 
three (3) months prior to the month of application) an emergency 
medical condition not related to an organ transplant procedure, 
which shall be a medical condition (including severe pain) in which 
the absence of immediate medical attention could reasonably be 
expected to result in placing the patient's health in serious jeopardy, 
serious impairment to bodily functions or serious dysfunction of any 
bodily organ or part; 
4. Approval of eligibility shall be for a time limited period, with 
that period to include the month in which the medical emergency 
begun and the next following month, with the added provision that 
the eligibility period shall be extended for an appropriate period of 
time upon presentation to the department of written documentation 
from the medical provider that the medical emergency will exist for 
a more extended period of time than is allowed for in the time limited 
eligibility period; and 
5. The Medicaid benefits to which the alien is entitled shall be 
limited to the medical care and services (including limited 
follow-up) necessary for the treatment of the emergency medical 
condition of the alien; 
(13) An individual shall be determined eligible for Medicaid for 
up to three (3) months prior to the month of application if all 
conditions of eligibility are met and the applicant is not participating in a 
managed care partnership. 
(a) Except as provided in paragraphs (b) and (c) of this subsection, 
the effective date of Medicaid shall be the first day of the month 
of eligibility. 
(b) For an individual eligible on the basis of desertion, a period of 
desertion shall have existed for thirty (30) days, and the effective 
date of eligibility shall not precede the first day of the month of 
application. 
(c) For an individual eligible on the basis of utilizing his excess 
income for incurred medical expenses, the effective date of eligibility 
shall be the day the spend-down liability is met; 
(14) Benefits shall be denied to a family for a month in which a 
parent with whom the child is living is, on the last day of the month, 
participating in a strike, and the individual's needs shall not be 
considered in determining eligibility for Medicaid for the family if, on 
the last day of the month, the individual is participating in a strike. 
A strike shall include a concerted stoppage of work by employees 
(including a stoppage by reason of expiration of a collective bargaining 
agreement) and any concerted slowdown or other concerted 
interruption of operations by employees; 
(15) A caretaker relative (but not a child) removed from a family 
related Medicaid only case due to failure to meet a technical eligibility 
requirement shall not be eligible for Medicaid as a medically 
 needy individual unless the individual is separately eligible for 
medical assistance without regard to eligibility as a member of the group 
from which the individual has been removed; and 
(16) A caretaker relative, but not a child, who is ineligible for 
K-TAP benefits due to failure to comply with K-TAP work requirements 
shall not be eligible for medical assistance unless the individual is 
eligible as a pregnant woman. 
Section 6. Institutional Status. An individual shall not be eligible 
for Medicaid if the individual is a: 
(1) Resident or inmate of a nonmedical public institution; 
(2) Patient in a state tuberculosis hospital unless he has 
reached age sixty-five (65); 
(3) Patient in a mental hospital or psychiatric facility unless the 
individual is: 
(a) Under age twenty-one (21); 
(b) Under age twenty-two (22) if he was receiving inpatient 
services on his 21st birthday; 
(c) Sixty-five (65) years of age or over; or 
(d) Participating in Kentucky Medicaid's managed behavioral 
health care organization; or 
(4) Patient in a nursing facility classified by the Medicaid 
program as an institution for mental diseases, unless the individual: 
(a) Has reached age sixty-five (65); or 
(b) Is participating in Kentucky Medicaid's managed behavioral 
healthcare organization. 
Section 7. Emergency Shelters. An individual or family group 
who is in an emergency shelter for a temporary period of time shall 
be eligible for medical assistance even though the shelter is consid 
ered a public institution under certain conditions. These conditions 
shall be as follows: 
(1) The individual or family group shall: 
(a) Be a resident of an emergency shelter no more than six (6) 
months in any nine (9) month period; and 
(b) Not be in the facility serving a sentence imposed by the 
court, or awaiting trial; and 
(2) Eligibility for Medicaid shall have existed immediately prior to 
admittance to the shelter, or it shall exist immediately after leaving 
the shelter. 
Section 8. Application for Other Benefits. (1) As a condition of 
eligibility for Medicaid, an applicant or recipient shall apply for each 
annuity, pension, retirement and disability benefit to which he is 
eligible, unless he can show good cause for not doing so. 
(a) Good cause shall be considered to exist if other benefits 
have previously been denied with no change of circumstances, or 
the individual does not meet all eligibility conditions. 
(b) Annuities, pensions, retirement and disability benefits shall include: 
1. Veterans' compensations and pensions; 
2. Retirement and survivors disability insurance benefits; 
3. Railroad retirement benefits; and 
4. Unemployment compensation. 
(2) An applicant or recipient shall not be required to apply for federal benefits if: 
(a) The federal law governing that benefit specifies that the 
benefit is optional; and 
(b) A potential applicant or recipient is not required to apply for the 
benefit if the applicant or recipient believes that applying for the 
benefit would be to his disadvantage. 
(3) An individual who would be eligible for supplemental security 
income (SSI) but has not made application shall not be eligible for 
Medicaid. 
Section 9. Assignment of Rights to Medical Support. By accepting 
assistance for or on behalf of a child, a recipient shall be 
deemed to have made an assignment to the Cabinet for Health 
Services of any medical support owed for the child not to exceed the 
amount of Medicaid payments made on behalf of the recipient. 
Section 10. Third-party Liability as a Condition of Eligibility. 
(1) Except as provided in subsection (3) of this section, an 
individual applying for or receiving Medicaid shall be required as a 
condition of eligibility to cooperate with the Cabinet for Health Services 
in identifying, and providing information to assist the cabinet in pursu 
ing, any third party who may be liable to pay for care or services 
available under the Medicaid Program unless the individual has 
good cause for refusing to cooperate. 
(b) Good cause for failing to cooperate shall exist if coopera 
tion: 
1. Could result in physical or emotional harm of a serious 

nature to a child or custodial parent;
2. Is not in a child’s best interest because the child was
conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceed-
 ings. [as determined by the cabinet in consideration of the
  best interests of the individual involved.]
(2) A failure of the individual to cooperate without good cause
shall result in ineligibility of the individual.
(3) A pregnant woman eligible under poverty level standards
shall not be required to cooperate in establishing paternity or secur-
ing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as
provided in subsections (2) and (3) of this section, an applicant or
recipient of Medicaid shall provide a social security number as a
condition of eligibility.
(2) An individual shall not be denied eligibility or discontinued
from eligibility due to a delay in receipt of a social security number
from the Social Security Administration if appropriate application
for the number has been made.
(3) If the parent or caretaker relative refuses to cooperate with
obtaining a social security number for the newborn child or other
dependent child, the parent or caretaker relative shall be ineligible
due to failure to meet technical requirements. The newborn child or
other dependent child shall be eligible for Medicaid if financial eligi-
bility requirements are met.

MIKE ROBINSON, Commissioner
MARcia R. MORGAN, Secretary
APPROVED BY AGENCY: June 11, 2003
FILEd WITH LRC: June 11, 2003 at 2 p.m.

Cabinet for Health Services
Department for Medicaid Services
Division of Managed Care
(As Amended at ARRS, August 7, 2003)

907 KAR 1:018. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.563, 205.565, 205.568,
205.569, 205.586, 205.588, 205.5636, 205.638, 205.639, 205.6316(4), 217.015,
311.550, 311.569, 42 C.F.R. 440.120, 447.331, 447.332, 447.333,
42 U.S.C. 256a, 1396a-d
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1),
205.520(3), 205.560, 205.561(4), 205.6316(4)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for
Health Services, Department for Medicaid Services has responsibil-
ity to administer the Medicaid Program. KRS 205.520(3) authorizes
the cabinet, by administrative regulation, to comply with any re-
quirement that may be imposed, or opportunity presented, by federal
law for the provision of medical assistance to Kentucky’s indigent
citizen. KRS 205.6316(4) requires the department to promulgate
an administrative regulation to establish a dispensing fee for pre-
scriptions. This administrative regulation establishes the method for
determining reimbursement for drugs through the Medicaid Outpa-
tient Pharmacy Program and the dispensing fees.

Section 1. Definitions. (1) “A-rated generic product” means a
product that the FDA has found to be bioequivalent.
(2) “Average wholesale price” or “AWP” means the average
wholesale price published in a nationally-recognized comprehensive
drug file for which the department has contracted.
(3) “Department” means the Department for Medicaid Serv-
ices or its designated agent.
(4) “Direct price” means the estimated acquisition cost for which
a retailer can purchase a drug product directly from the manufac-
turer as listed in a nationally-recognized comprehensive drug data
file for which the department has contracted.
(5) “Dispensing fee” means a professional fee paid to reim-
burse a pharmacy for costs associated with the dispensing of a
prescribed drug.
(6) “Food and Drug Administration” or “FDA” means the Food
and Drug Administration of the United States Department of Health
and Human Services.
(7) “Nonsolid dosage form” means a covered drug item
other than an oral tablet, oral capsule, or inhaler.
(8) “Wholesale acquisition cost” or “WAC” means the estimated
acquisition cost for the wholesaler as listed in a nationally-
recognized comprehensive drug data file for which the department
has contracted.

Section 2. Reimbursement [Limits]. (1) Except as specified in
subsection (2) of this section, reimbursement to a participat-
ing provider shall be comprised of a dispensing fee and the cost of the
drug product. [Effective August 1, 2002.] If a recipient is required
 to pay a copayment for a drug in accordance with 907 KAR 1:004,
the reimbursement to the participating provider for the dispensing
fee shall be reduced by the amount of the copayment.
(2) The department shall:
(a) Establish a state maximum-allowable cost for a drug:
1. For which a federal upper limit does not exist; and
2. For which at least one (1) readily and nationally-available A-
rated generic product exists;
(b) Determine a state maximum-allowable cost for a drug by
identifying the lowest price for a drug regardless of manufacturer,
including both generic and brand names, and multiplying that price by
150 percent. The lowest price for a drug shall be:
1. Identified in a nationally-recognized comprehensive drug data
file for which the department has contracted; and
2. Determined by reviewing the pricing determinations of AWP,
WAC, and direct price for the drug;
(c) Remove a state maximum-allowable cost for a drug if a fed-
eral upper limit becomes available for the drug; and
(d) Maintain a current listing of drugs and their corresponding
state maximum-allowable costs at the department web site located
at the following address: http://the.ky.gov/dms [state.ky.us/dms].
(3) A provider may submit drug acquisition cost or product avail-
ability information to the department. Upon receipt of accurate
documentation (including recent drug purchase summaries, inv-
olves, or remittance advices) [acceptable information] from the
provider, the department:
(a) Shall review the referenced product and its corresponding
state maximum-allowable cost value to ensure it reflects an accurate
market price and availability; and
(b) May consider adjusting or removing the state maximum-
allowable cost for the drug if the department determines that the
state maximum-allowable cost does not accurately reflect current
market price or conditions.
(d) Reimbursement to a pharmacy participating in the Medicaid
Program for a drug listed in the Kentucky Medicaid Outpatient Drug
Formulary established in 907 KAR 1:019 and provided to an eligible
recipient shall be determined in accordance with the require-
ments established in this subsection.
(a) An appropriate rebate agreement shall be signed by the drug
manufacturer or the drug shall be provided based on a prior author-
ized exemption from the rebate requirement in accordance with 907
KAR 1:019.
(b) Drug costs shall be determined in the Pharmacy Program
using drug pricing and coding information obtained from a nationally-
recognized comprehensive drug data file for which the department
has contracted with pricing based on the actual package size util-
ized.
(c) Except as provided in paragraphs (d) and (e) of this subsec-
tion, reimbursement for a drug shall be the lesser of:
1. The federal upper limit [maximum-allowable cost] plus a dispens-
ing fee and unit dose add-on as appropriate;
2. The state maximum-allowable cost plus a dispensing fee and unit
dose add-on as appropriate if a federal upper limit is unavail-
able;
3. The estimated acquisition cost (EAC) which shall equal the
AWP minus twelve (12) percent, plus a dispensing fee and unit dose
add-on as appropriate.
a. Prior to April 1, 2002, EAC shall equal the average wholesale
price (AWP) minus ten (10) percent; and
b. Effective April 1, 2002, EAC shall equal the average whole-
sale price (AWP) minus twelve (12) percent; or
4. The usual and customary billed charge.
(d) Except as provided in paragraph (e) of this subsection, if a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement shall be the lesser of:
1. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate;
2. The usual and customary billed charge.

(e)(1) Reimbursement for the dispensing of an emergency supply of a drug shall be made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4.

2. Except as specified in subparagraph 3 of this paragraph, reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:
   a. The federal upper limit [maximum allowable cost] plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;
   b. The state maximum allowable cost plus a dispensing fee and unit dose add-on as appropriate;
   c. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;
   d. = [a] The usual and customary billed charge.

3. If a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:
   a. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;
   b. The usual and customary billed charge.

4. If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that reimbursement shall not include a dispensing fee.

(f) Reimbursement shall be denied if:
1. The recipient is ineligible on the date of service;
2. The drug is obtained from coverage in accordance with 907 KAR 1:019, Section 3; or
3. Prior authorization is required by the department and has been denied or has not been requested.

(g) For a nursing facility resident meeting Medicaid nursing facility level of care [patient status] criteria in accordance with 907 KAR 1:022, there shall not be more than:
1. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless the prescribed dosage has been changed;
2. Except as specified in subparagraphs 3 and 4 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and
3. Four (4) dispensing fees per drug within a calendar month for a nonmaintenance drug, a Schedule II, III or IV controlled substance or a legend intravenous drug.

(h) For a nursing facility resident meeting Medicaid nursing facility level of care [patient status] criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(i) For an outpatient or personal care recipient there shall not be more than:
1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or
3. Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed;
4. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(j) Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the following:
   1. National Drug Code (NDC); or
   2. Generic name, strength, and dosage form.

(k) [45] For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(l) [44] A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(m) [46] If a payment is made for a drug for which there is no authorization as required by 907 KAR 1:019, the provider shall reimburse the department the amount of the payment.

(n) [46] A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(o) [42] A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.

(p) [46] Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.

(q) [46][a] If the medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(r) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall submit a Third-party Liability Lead Form to the department's fiscal agent.

(s) [44] Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

(t) [46] A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual acquisition cost for a drug and

(u) The department shall reimburse the pharmacy's actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

(1) [42] If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:

(a) The pharmacy shall bill its usual and customary amount for a drug;

(b) The department shall reimburse a drug in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.581.

(2) Except as provided in subsection (3) of this section, based on the conclusion of the dispensing fee study of the [annual] report conducted in accordance with KRS 205.581, the dispensing fee, unless excluded by Section 2(4)(2)(e) of this administrative regulation, shall be four (4) dollars and fifty-one (51) cents per prescription
for a drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care [appropriate patient status] criteria requirements established in 907 KAR 1.222.

(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care [appropriate patient status] criteria requirements established in 907 KAR 1.222, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of:
1. Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer; and
2. Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist.

(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of four (4) dollars and fifty-one (51) cents is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(2)(e) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:
(1) As the lesser of:
(a) The maximum-allowable cost or estimated acquisition cost established in Section 2(4)(2)(f) of this administrative regulation; or
(b) The physician's usual and customary charge to the general public for the drug; or
(2) In accordance with 907 KAR 3.01O for a free immunization through the Vaccines for Children Program.

MIKE ROBINSON, Commissioner
MARcia R. MORGAN, Secretary
APPROVED BY AGENCY: May 13, 2003
FILEd WITH LRC: June 12, 2003 at 3 p.m.

CABINET FOR HEALTH SERVICES
Commission for Children with Special Health Care Needs
Health and Development Division
(As Amended at ARRS, August 7, 2003)

911 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health Services [ie directed by KRS 200.660 to 200.676] to administer [all] funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes [etc] the [provisions for] evaluation and eligibility requirements for [office concerned with] First Steps, Kentucky's Early Intervention Program.

Section 1. Evaluation. (1)(a) A child referred to the First Steps Program shall be initially evaluated to determine eligibility.

(b) Beginning with IFSP meetings scheduled on or after January 1, 2004 [until exiting the program and in accordance with subsection (B) of this section], the child shall be evaluated on an annual basis to determine on-going eligibility and to evaluate progress while in the program, until the child exits the program and in accordance with subsection (B) of this section.

(2)(a) A determination of initial eligibility pursuant to Section 2 of this administrative regulation, assessments in the identified area of delay, in accordance with 911 KAR 2:130, and the initial IFSP team meeting [every child shall have an evaluation to determine eligibility].

(b) A primary evaluation shall occur within forty-five (45) calendar days after a point of entry receives an initial [receipt of the] referral.

(c) If a determination of initial eligibility, assessments and initial IFSP team meeting [primary evaluation] does not occur within forty-five (45) calendar days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(c) If [when] a family is referred for a determination of initial eligibility [evaluation by the initial service coordinator] and the family is under court order or a social service directive in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the determination of eligibility [evaluation].

(3)(a) Child records of evaluations transferred from an in-state or out-of-state developmental evaluator [tertiary or developmental evaluation center] shall be reviewed by the initial service coordinator [evaluation shall be utilized for eligibility determination if [when]:
(a) The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and
(b) The records contain the [all] developmental evaluation information established in subsection (11)(4)(c) of this section [required by First Steps to determine eligibility].

(4) (c) The primary level evaluation shall be [a] the first level in the First Steps evaluation system and [b] shall be utilized to determine eligibility, developmental status and recommendations for further assessment to determine program planning.

(a) If a previous [the] primary level evaluation available, it shall be used to determine eligibility if [such used when there are no existing evaluations available within the allowed time limits]:
1. For children under twelve (12) months of age, the evaluation was [evaluations shall have been] performed within three (3) months prior to referral to First Steps;
2. [a] For children twelve (12) months to three (3) years of age, the evaluation was [evaluations must have been] performed within six (6) months prior to referral to First Steps; and
3. There is no additional information or the family has not expressed new concerns that would render the previous evaluation no longer valid.

(a) If there is a previous primary level evaluation available that was performed within the timeframes established in subparagraph 1 [paragraph 2] of this paragraph but there are new concerns that shall render the evaluation no longer valid, the initial service coordinator shall request a new primary level evaluation.

(3)(b) Primary level evaluations shall provide evaluation in the [all] five (5) developmental areas identified in Section 2(1)(a)(1) through 5 of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas.

(d)(c) The primary level evaluation shall be provided by:
1. A [team consisting of] a physician or nurse practitioner; and
2. A primary evaluator approved by the cabinet.

(e) A primary level [evaluation shall be] primary level evaluation [shall be] to be multidisciplinary and shall minimally include:
1. A medical component completed by a physician or nurse practitioner that shall include [includes]:
   a. A history and physical examination;
   b. A hearing and vision screening; and
   c. A child's medical evaluation that shall be current in accordance with the EPSDT Periodic City Schedule; and

2. A developmental component completed by a cabinet-approved [qualified] primary level evaluator that utilizes norm-referenced standardized instruments, [measures and] the results of which shall:
   a. Include the recommendation of a determination of eligibility or possible referral for a record review; and
   b. Be interpreted to the family prior to the discussion required by [established in] subsection (5) of this section.

A primary level evaluation shall be performed if a child has an established risk diagnosis established in Section 2(1)(c) of this administrative regulation.

(a) Prior to the initial IFSP team meeting, the initial service
coordinator shall:
(a) contact the family and primary level evaluator to discuss the child's eligibility in accordance with subsection (4)(e)(2) of this section; if the child is determined eligible, the service coordinator shall:
1. Make appropriate arrangements to select a primary service coordinator;
2. Arrange assessments in the areas identified in Section 2(1)(C) of this administrative regulation found to be delayed; and
3. Assist the family in selecting service providers in accordance with 911 KAR 2:110. If the child is receiving therapeutic services from a provider outside of the First Steps Program, the service coordinator shall:
   a. Invite the current provider to be a part of the IFSP team;
   b. Request that the provider supply the team with their assessment and progress reports; and
   c. If the current provider does not want to participate, have the First Steps provider of the same discipline consult with the current provider if assessing the area being treated by the current provider.
   [and]
(b) If the child does not have an established risk condition identified in Section 2(1)(C) of this administrative regulation, and is determined not eligible, the team shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health and Family Services, and the Commission for Children with Special Health Care Needs (CCHC's) Title V programs, and other third-party payors.
2. If the child has an established risk condition, and the developmental evaluation:
   a. Does not indicate a developmental delay in at least one (1) skill area, the family shall receive service coordination services until the earlier of:
      i. An annual developmental evaluation that is performed in accordance with subsection (6)(e)(4) of this section; or
      ii. Notification that the family has a concern or suspects that the child may have a delay present that was not revealed by the testing.
   b. If the situation described in clause a(i) of this subparagraph occurs, the procedure established in Section 2(2)(1)(D) of this administrative regulation shall be followed;
   (5) At the initial IFSP team meeting, the IFSP team shall:
      a. Include the following members at a minimum:
         1. The parent of the child;
         2. Other family members, as requested by the parent, if feasible to do so;
      3. An advocate or person outside of the family, if the family requests that the person participate;
      4. The initial service coordinator;
   5. [4] The primary service coordinator;
   and
7. If appropriate, [5] a First Steps provider who shall provide services to the child or family therapeutics intervention;
   (b) Verify the child's eligibility;
   (c) Review the evaluation information identified in subsection (4) of this section;
   (d) Review the assessment reports in accordance with 911 KAR 2:130;
   (e) Determine the family's outcomes, strategies, and activities to meet those outcomes, and
   (f) Determine the services the child shall receive in order for the family to learn the strategies and activities identified on the IFSP. This shall include identifying:
      1. The discipline;
      2. The professional, paraprofessional, or both;
      3. The method in which services shall be delivered, such as individual, group, or both; and
      4. The payor source for the service. [The IFSP team meeting, (3)]
   (3) Verifications of a child's eligibility for services shall be based upon the review by parents and professionals at the initial IFSP meeting;
   (7)(e) (44) Reevaluations shall be provided if the IFSP team determines when a child's eligibility warrants review.
   (b) Primary level reevaluations shall not be used to:

   1. Address concerns that are medical in nature; or
   2. Provide periodic, ongoing follow-up services for post-testing or testing for transition; or a new condition is suspected or becomes apparent;
   (a) The need for reevaluation is determined by the IFSP team;
   (b) Reevaluations shall be obtained at the level of evaluation determined to be needed by the IFSP team;
   (c) Based on the result of the reevaluation or annual evaluation, the IFSP team shall:
      1. Continue with the same level of services; or
      2. Continue with modified services; or
      3. Transition; [Graduate] the child from First Steps services (because child is developmentally appropriate; or
   (d) Continue eligibility with a tracking and maintenance approach and reevaluate in six (6) months;
   (b) The provisions of this subsection shall apply to IFSP meetings scheduled on or after January 1, 2004.
   (a) In accordance with KRS 200.664(7), in order to determine ongoing eligibility:
      1. [6] A developmental evaluation shall be performed on an annual basis no earlier than ninety (90) days nor later than sixty (60) days before the annual IFSP expiration date; and
      2. [6] An updated medical evaluation shall be obtained from the child's physician or nurse practitioner in accordance with subsection (4)(e)(10) of this section. [30 development evaluation shall be performed on an annual basis in the anniversary month of;
   1. A child's primary level evaluation; or
   2. The month he was referred to First Steps if the child was determined eligible due to an established risk condition;
   (b) [6] (6b) The annual developmental evaluation shall be performed by a primary level evaluator who is not currently providing a therapeutic intervention for that child and shall provide an evaluation in the five (5) developmental areas identified in Section 2(1)(C) of this administrative regulation.
   (c) [6] (6a) If the results of the annual evaluation do not meet the eligibility requirements of Section 2(1)(C) or (6)(b)(6) of this administrative regulation, within three (3) days of receiving the written evaluation report, the service coordinator shall:
      1. Within three (3) days of receiving the written evaluation report, notify the service provider that the child and family are no longer eligible for First Steps services and that [therefore] therapeutic intervention shall cease;
      2. Facilitate a transition conference in accordance with 911 KAR 2:140, Section 1(l)(4) [44]; and
      3. Subsequent to the transition conference, discharge the child from the program. [The child shall be discharged from the program.]
   (9) A review of the child's First Steps record shall be [65] An intensive evaluation is the second level in the First Steps evaluation system that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation, [65] (a) Upon obtaining a written consent by the parent, a service coordinator shall submit a child's record to the CCHC for a record review if [A child shall be referred for an intensive level evaluation when];
      1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to further define the child's developmental status in terms of a child's strengths and areas of need; or
      2. A child does not [satisfy] meet eligibility guidelines at the primary level, but an IFSP team member and [a primary evaluator or the family still have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed; or]
      3. The IFSP team requests an intensive level [team] evaluation for the purposes of obtaining a medical [64] diagnosis or to make specific program planning and evaluation recommendations for the individual child.
   (b) If a service coordinator sends a child's record for a record review, the following shall be submitted to the Record Review Committee, Louisville CCHC, 892 Eastern Parkway, Louisville, Kentucky 40217;
   a. A cover letter from the service coordinator or primary evaluator justifying the referral for a record review;
   b. Primary level evaluation information specified in subsection
c. Available assessment reports required in 911 KAR 2:130;
}(10) of this section;
d. Available IFSPs and amendments;
e. Must most recent progress reports from the IFSP team members;
Reports older than three (3) months shall include an addendum
referring to current progress; [wld]
f. Therapeutic staff notes from the previous two (2) months; and
[g. If requesting a record review for a child who is receiving
speech therapy, a hearing evaluation performed by an audiologist
within six (6) months of the request.
2. The service coordinator [or primary evaluator] requesting the
record review shall attempt to procure and submit the following
information, if available:
a. Birth records, if neonatal or perinatal complications occurred;
b. General pediatric records from the primary pediatrician;
c. Medical records from hospitalizations; and
(d. Records from medical subspecialty consultations, such as
neurology, orthopedic, gastroenterology or ophthalmology.
(c1) Upon receiving a referral, a team of CCHSN professional
staff shall conduct a record review.
2. After conducting the record review, CCHSN staff shall:
a. Determine whether there are at least sixty (60) calendar
days from the date of the review before the child turns three (3)
years of age;
b. Determine that the child meets or does not meet the eligi-
bility criteria established in Section 2(1) of this administrative
regulation; and
3. Provide the IFSP team with recommendations for service
planning.
(a) If there are at least sixty (60) calendar days from the
date of the review before the child turns three (3) years of age,
CCHSN staff shall:
(i) Determine if further developmental testing, diagnostics
or additional professional judgment are required in order to ade-
quately ascertain the child's developmental needs; and
(ii) Provide the IFSP team with recommendations for service
planning or
(iii) The child for an intensive level evaluation, the third level
in the First Steps evaluation system; or
(iv) The family to local community resources.
4. If there are not at least sixty (60) calendar days from the
date of the review before the child turns three (3) years of age,
CCHSN staff shall provide the IFSP team with a recommenda-
tion for transition planning.
(i) Determine that there are at least sixty (60) calendar days from the
date of the review before the child turns three (3)
years of age;
(ii) Determine if [that] further developmental testing, diagnostics
or additional professional judgment are required in order to ade-
quately ascertain the child's developmental needs; and
(iii) Refer the child for an intensive level evaluation, the third
level in the First Steps evaluation system; or
4. Provide the IFSP team with recommendations for service
planning.
(b) If there are not at least sixty (60) calendar
days from the date of the review before the child turns three (3)
years of age, and
Provide the IFSP team with recommendation for transition
planning;
(c) Determine that the child meets or does not meet the eligibility
criteria established in Section 2(1) of this administrative regulation;
or
4. Provide the IFSP team with recommendations for service
planning.
[c] Upon request of the CCHSN, a team approved by the
CCHSN and consisting of the following members shall perform an
intensive level evaluation: [A record review shall be done by an
intensive level evaluation team at the request of the IFSP team whenever:
4. There is a question of eligibility;
2. Concern for a child's condition;
3. Effectiveness of a child's program-plan.
(c) An intensive level evaluation shall be provided by an appro-
proved team consisting of:
1. A board certified developmental pediatrician; [es]
b. [24] A pediatrician who has experience in the area of early
childhood development; [es]
c. [25] A pediatric psychiatrist; or
d. [26] A pediatric neurologist; and
2. [2a] One (1) or more [qualified] developmental professionals
identified in 911 KAR 2:150, Section 1; or
b. If an IFSP is currently in place, a developmental professional
representing each discipline that is currently on the IFSP in addition
to a professional whose scope of work addresses additional con-
cerns expressed by the intensive level evaluation team.
(c6) Family rights shall [must] be respected and procedural
safeguards followed in providing evaluation services. [c]
(a) Written parental consent shall be obtained before conducting
an evaluation or assessment by the evaluator or assessor respecti-
vately.
(b) If a parent or guardian refuses to allow a child to undergo a
physical or medical examination for eligibility because of religious
beliefs:
4. Documentation shall be obtained in the form of a notarized
statement. The notarized statement shall be signed by the parent or
parent to the effect that the physical examination or evaluation is in
conflict with the practice of a recognized church or religious de-
nomination to which they belong; [c]
2. If a child is determined with the presence of a professional
judgement of developmental delay that determines the child, to be
eligible First Steps shall provide, at the parent's request, services
that do not require, by statute, proper physical or medical evalua-
tions; [c]
3. The initial service coordinator shall explain to the family that
refusal due to religious beliefs may result in a denial of services
which require a medical assessment on which to base treatment
protocols.
[c2] A report shall be written in accordance with the time
frames established in paragraph (c)1 of this subsection [report
shall be completed upon completion of each [an] evaluation for
every level of evaluation including record reviews].
(a) A record review report shall include the components speci-
fied in this paragraph that can be addressed without having the child
or parent present for the evaluation. A report resulting from a pri-
mary level evaluation or an intensive level evaluation shall include
the following components [The minimum components are]:
1. Date of evaluation;
2. Names of evaluators and those present during the evaluation,
professional degree, and discipline;
3. The setting of the evaluation;
4. [26] Name and telephone number of the contact person;
5. [26] Identifying information that includes the:
(a) Child's CBIS identification number;
b. Child's name and address;
c. Child's chronological age (and gestational age if prematurely
born) at the time of the evaluation;
4. Health of the child during the evaluation;
5. Age;
6. Date of birth;
7. Date of evaluation;
8. Evaluator's affiliation, and professional degree;
9. [es] [Referral source; and
10. [es] Reason for referral or presenting problems; [c]
11. [es] Tests administered or evaluation procedures utilized and
the purpose of the instrument. [Bio] One (1) method of evaluation
shall not be used, but a combination of tests and methods shall be
used;
7. [es] Test results and interpretation of strengths [strength] and
needs of the child;
8. [es] Test results reported in standard deviation pursuant to
subsection (4)(e2) of this section;
9. Factors that may have influenced test conclusion or develop-
mental quotient when such instrumentation is required;
10. [es] Eligibility;
11. [es] Developmental status or diagnosis;
12. Suggestions regarding how services may be provided in a
natural environment [es] Program plan recommendations that
address the child's holistic needs based on the evaluation;
13. Parent's assessment of the child's performance in compari-
sion to abilities demonstrated by the child in more familiar circum-
stances
Aase-Smith syndrome
Aase syndrome
Acrocallosal syndrome
Acrodysostosis
Acro-Crani-Renal syndrome
Adrenoleukodystrophy
Agenesia of the Corpus Callosum
Agryia
Aicardi syndrome
Alexander's Disease
Alper's syndrome
Amelia
Angelman syndrome
Aniridia
Anophthalmia/Microphthalmia
Antley-Bixler syndrome
Apert syndrome
Arachnoid cyst with neuro-developmental delay
Aphakia
Arthrogryposis
Ataxia
Atelosteogenesis
Autism
Baller-Gerold syndrome
Bannayan-Riley-Ruvalcaba syndrome
Bardet-Biedl syndrome
Bartsocas-Papas syndrome
Beals syndrome (genetic contractual arachnodactyly)
Biotinidase Deficiency
Bixler syndrome
Blacker-Diamond syndrome
Bobble Head Doll syndrome
Borjeson-Forssman-Lehmann syndrome
Brachial Plexopathy
Brancio-Oto-Renal (BOR) syndrome
Campomelic Dysplasia
Canavan Disease
Carbohydrate Deficient Glycoprotein syndrome
Cardio-Facio-Cutaneous syndrome
Carpenter syndrome
Cataracts - Congenital
Caudal Dysplasia
Cerebro-Costo-Mandibular syndrome
Cerebellar Aplasia/Hypoplasia/Degeneration
Cerebral Atrophy
Cerebral Palsy
Cerebro-oculo-facial-skeletal syndrome
CHARGE Association
Chediak-Higashi syndrome
Chondrodysplasia Punctata
Christian syndrome
Chromosome Abnormality
a. unbalanced numerical (autosomal)
b. numerical trisomy (chromosomes 1-22)
c. sex chromosomes XXX; XXXX; XXXXY; XXXXY
CNS Aneurysm with Neuro-Developmental Delay
CNS Tumor with Neuro Developmental Delay
Cockayne syndrome
Coffin Lowry syndrome
Coffin Siris syndrome
Cohen syndrome
Cone Dystrophy
Congenital Cytomegalovirus
Congenital Herpes
Congenital Rubella
Congenital Syphilis
Congenital Toxoplasmosis
Cortical Blindness
Costello syndrome
Cri du chat syndrome
Cryptophthalmos
Culis Laxa
Cytochrome-c Oxidase Deficiency
Dandy Walker syndrome
DeBary syndrome
DeBiquoix syndrome
Dejerine-Sottas syndrome
DeLange syndrome
DeSanctis-Cacchione syndrome
Diastrophic Dysplasia
DiGeorge syndrome (22q11.2 deletion)
Distal Arthrogryposis
Donohue syndrome
Down syndrome
Dubowitz syndrome
Dyggve Mechsor-Clausen syndrome
Dyssegmental Dysplasia
Dystonia
EEC (Ectrodactyly-ectodermal dysplasia-clefting) syndrome
Encephalocoele
Encephalito-Cranio-Cutaneous syndrome
Encephalomalacia
Exencephaly
Facio-Auriculo-Radial dysplasia
Facio-Cardio-Renal (Eastman-Bixler) syndrome
Familial Dysautonomia (Riley-Day syndrome)
Fanconi Anemia
Farber syndrome
Fatty Acid Oxidation Disorder (SCAD, ICAD, LCHAD)
Femoral Hypoplasia
Fetal Alcohol syndrome/Effects
Fetal Dyskinesia
Fetal Hydantoïn syndrome
Fetal Valproate syndrome
Fetal Varicella syndrome
FG syndrome
Fibrochondrogenesis
Floating Harbor syndrome
Fragile X syndrome
Fretman-Sheid (Whistling Facies) syndrome
Frys syndrome
Fucosidosis
Glaucoma - Congenital
Glutaric Aciduria Type I and II
Glycogen Storage Disease
Goldberg-Sabrinzen syndrome
Grebe syndrome
Hallerman-Streiff syndrome
Hays-Wells syndrome
Head Trauma with Neurological Sequelae/Developmental Delay
Hearing Loss (Bilateral permanent hearing loss with pure tone average of 30dB or greater)
Hemimegalencephaly
Hemiplegia/Hemiparesis
Hemorrhage-Intraventricular Grade III, IV
Hereditary Sensory & Autonomic Neuropathy
Hereditary Sensory Motor Neuropathy (Charcot Marie Tooth Disease)
Herrmann syndrome
Heterotopias
Holoprosencephaly (Aprosencephaly
Holl-Oram syndrome
Homocystinuria
Hunter syndrome (MPSII)
Huntington Disease
Hurler syndrome (MPSI)
Hyalanosis
Hydranencephaly
Hydrocephalus
Hyperpipeolic Acidemia
Hypomelanosis of ITO
Hypophosphatiasis-Infantile
Hypoxic Ischemic encephalopathy
I-Cell (mucolipidosis II) Disease
Incontinentia Pigmenti
Infantile spasms
Innencephaly
Isovaleric Acidemia
Jarcho-Levin syndrome
Jervell syndrome
Johanson-Blizzard syndrome
Joubert syndrome
Kabuki syndrome
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<th>KBG syndrome</th>
<th>Nance Horan syndrome</th>
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<td>Kenny-Caffey syndrome</td>
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<td>Klee Blattschadel</td>
<td>Neonatal Meningitis/Encephalitis</td>
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<td>Neuronal Ceroid Lipofuscinoses</td>
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<td>Oculo-Cutaneous Albinism</td>
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<td>Legal blindness (bilateral visual acuity of 20/200 or worse corrected vision in better eye)</td>
<td>Optic Atrophy</td>
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<td>Leigh Disease</td>
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<td>Oral-Facial-Digital syndrome Type I-VIII</td>
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<td>Osteogenesis Imperfecta Type III-IV</td>
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<td>Osteopetrosis ( Autosomal Recessive)</td>
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<td>Ob-Ob-Palato-Digital Syndrome Type I-II</td>
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<td>Poland Sequence</td>
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<td>Retinopathy of Prematurity Stages III, IV</td>
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<td>Myopathy - Congenital</td>
<td>Schwartz-Jampel syndrome</td>
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<td>Myotonic Dystrophy</td>
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<td>Nager (Acrofacial Dysostosis) syndrome</td>
<td>Septo-Optic Dysplasia</td>
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Shaken Baby syndrome
Short syndrome
Sialidosis
Simpson-Golabi-Behmel syndrome
Sly syndrome (MPS VII)
Smith-Fineman-Myers syndrome
Smith-Limitz-Opitz syndrome
Smith-Magenis syndrome
Sokol syndrome
Spina Bifida (Meningomyelocele)
Spinal Muscular Atrophy
Spondyloepiphysical Dysplasia Congenita
Spondylometaphysical Dysplasia
Stroke
Sturge-Weber syndrome
TAR (Thrombocytopenia-Absent Radii syndrome)
Thanatophoric Dysplasia
 Tibial Aplasia (Hyoplasia)
 Torielo-Carey syndrome
 Towne-Brooks syndrome
 Treacher-Collins syndrome
 Trisomy 13
 Trisomy 18
 Tubercular Sclerosis
 Urea Cycle Defect
 Velocardiofacial syndrome (22q11.2 deletion)
 Wilder vanck syndrome
 Walker-Warburg syndrome
 Weaver syndrome
 Wiedemann-Rautenstrauch syndrome
 Williams syndrome
 Winchester syndrome
 Wolf-Hirschhorn syndrome
 Yunis-Varon syndrome
 Zellweger syndrome

1. If a child referred to the First Steps Program was born at less than thirty-seven (37) weeks gestational age, the following shall be considered:
   (a) Children may be determined to be developmentally delayed by professional, clinical judgment, in the event standard deviation scores are inconclusive and evaluation reveals the child has significant delay. Delay is determined by development of certain skills and the child's ability to maintain adequate skills. Developmental delay shall be obtained from an approved evaluator.
   (b) Those children who are diagnosed with physical or mental conditions which have a high probability of resulting in developmental delay and whose diagnosis has been specified by KRS 200.645(11) as an established risk condition. The developmental delay shall be within one (1) of the following conditions:
      (i) Genetic abnormalities associated with developmental delay;
      (ii) Recognizable syndrome associated with developmental delay;
      (iii) Abnormality in central nervous system;
      (iv) Neurological or neuromuscular disorders associated with developmental delay;
      (v) Symptomatic intrauterine infection or neonatal central nervous system infection;
      (vi) Sensory impairments that result in significant visual or hear-
ing loss, or a combination of both, interfering with the ability to respond effectively to environmental stimuli;
      (vii) Metabolic disease having a high likelihood of being associated with developmental delay, even with treatment;
      (viii) Maternal teratogen exposure at a level known to have a high risk for developmental delay;
      (ix) Behavioral or emotional disorders associated with extreme excesses or deficits in social interaction function;
      (x) Central nervous system malignancy or trauma resulting in developmental delay.

2. Eligibility for a premature child shall consider:
   (a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth. The evaluator shall ensure that the instrument being used allows for the adjustment for prematurity. If it does not, another instrument shall be used.
   (b) Correction for prematurity shall not be used for children born prematurely whose chronological age is twenty-four (24) months or greater.

3. Documentation of prematurity shall include a physician's or nurse practitioner's written report of gestational age and a brief medical history.

4. Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 4. The provisions of this administrative regulation shall be effective with services provided on or after January 1, 2004 [September 1, 2003].

JAMES GILDERSLEVE, Chair
ERIC FRIEDLANDER, Executive Director
MARcia R. MORGAN, Secretary
APPROVED BY AGENCY: June 24, 2003
FILED WITH LRC: June 27, 2003 at noon

CABINET FOR HEALTH SERVICES
Commission for Children with Special Health Care Needs
Health and Development Division
(As Amended at ARRS, August 7, 2003)

911 KAR 2:130. Kentucky Early Intervention Program assessment and service planning.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health Services, as directed by KRS 200.660 to 200.676, to administer [all] funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes [outlines] the provisions of assessment and the Individualized Family Service Plans used in First Steps, Kentucky's Early Intervention Program.

Section 1. Assessment. (1) Initial assessment activities shall occur after the establishment of a child's eligibility for First Steps and prior to the initial IFSP in accordance with 911 KAR 2:120, Section 1.
(a) An initial assessment shall occur within the areas of development that were determined to be below the normal range as
identified in [a] the primary level evaluation [eligibility].

(b) The following shall complete an assessment:
1. A discipline most appropriate to assess the area of documented delay and of which the family has the greatest concern; and
2. The fewest additional disciplines as needed to assess the other areas identified as delayed. (With the exception of a child with an established risk condition in accordance with 911 KAR 2:120, Section 2(a), if the primary evaluation reflects a norm referenced score at or below the 15th percentile established in 911 KAR 2:120, Section 2(13) or (e), an initial assessment shall not be done in that domain.)

(c) If a child is eligible due to an established risk condition of hearing loss, an assessment shall be performed by a speech therapist.

(2) Assessment shall be the ongoing procedure used by qualified personnel meeting the qualifications established in 911 KAR 2:150 or throughout the period of a child's eligibility for First Steps. An assessment shall reflect:
(a) The child's unique strengths and needs;
(b) The services appropriate to meet those needs;
(c) The family's resources, priorities and concerns which shall be:
1. Voluntary on the part of the family;
2. Family-directed; and
3. Based on information provided by the family through personal interview;
and
(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(3)(a) Assessments shall be ecologically valid and reflect appropriate multivariate and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an indication to intervene in a program. All assessment methods shall include direct assessment and at least one (1) [any combination] of the following:

(1) a. Direct assessment shall include:
   (i) Instruments that are appropriate for infants and toddlers and that allow for adaptations for disability as needed; and
   (ii) Criterion referenced instruments, which compare the child's level of development with skills listed in a chronological sequence of typical development.

b. [Observations, shall, a. [4], Take place over several days if possible; and]
c. [Occur in [appropriate] natural settings; and]
d. Include play and functional activities of the child's day; and

2. [Recorded in a factual manner;]

(c) [Interview and parent reports, which shall:
   a. [Have use of open-ended questioning after the assessment completes](3); and]
   b. [Be provided by parents and other primary caregivers; and]

3. [Behavioral checklist and inventories, which shall:
   a. [Be completed by caregivers by mail, [a], phone or through face-to-face interview; and]
   b. [Allow for comparison across settings.

(d) Direct assessment shall include one (1) or more instruments:
   1. That are appropriate for an infant or toddler and that allows for adaptations for a disability as needed; and
   2. That are [criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.]

(e) In order for a therapeutic intervention to be provided in the area of delay identified by the developmental evaluation, the assessment instrument shall indicate that the child's development is below the instrument's normal range for a child his age.

(f) If after the initial assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:
   a. The parent has a documented concern that would necessitate another assessment;
   b. Why there is not a current provider on the IFSP team that can assess the area of concern; and
   c. What has changed in the child's ability to warrant the subsequent assessment.

(4) Except for a child deemed medically fragile by a physician or an advanced registered nurse practitioner (ARNP), a [registry, child determined eligible by established risk, pursuant to 911 KAR 2:120, Section 2(13) or (e), an initial assessment shall not be done in that domain.)

KAR 2:120E, Section 2(13) shall have an assessment in the [all] five (5) areas of development:

(a) Within forty-five (45) days after receipt of the referral; or
(b) If assessment does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(5) Except for a child deemed medically fragile by a physician or an ARNP, a [registry, child who is eligible for First Steps by having a developmental delay established pursuant to 911 KAR 2:120, Section 2(13) or (e), an initial assessment shall not be done in that domain.)

(6) A service coordinator shall be required to obtain a physician's or ARNP's written consent in order to complete an assessment on a child deemed medically fragile. The consent shall be specific as to the skill areas that may be assessed.

(7) The written assessment report shall include:
(a) A profile of the assessment instruments used in accordance with subsection (3)(b) of this section;
(b) A description of the assessment activities and the information obtained, including information gathered from the family;
(c) Identifying information, including:
   1. The central billing and identification number; [and]
   2. The child's Social Security number, if available; [and]
   3. The name of the child; [and]
   4. The child's age at the date of the assessment; [and]
   5. The name of the service provider and discipline; [and]
   6. The date of the assessment; [and]
   7. The child's level of performance, in a narrative form which [and] shall indicate:
      1. Concerns and priorities; [and]
      2. Child's unique strengths and needs; [and]
      3. Skills achieved since last report, if applicable; [and]
      4. Emerging skills; and
   5. Direction of future service delivery;

(d) [Suggestions for [appropriate] strategies, materials, settings, [and]
   equipment or adaptations that shall support the child's development in natural environments; and]

(e) [Information that shall be helpful to the family and other providers in building on the team's focus for the child and family; and]

(f) [The initial assessment, other formal assessments and their resulting report shall be completed within ten (10) working days of the provider receiving the complete written assessment referral from the service coordinator. The complete assessment referral [assessment] shall include:
   1. The point of entry, intake and child history documentation;
   2. The Point of Entry Update Form; and]

3. A. The primary level evaluation report; or
   b.[ ] If an IFSP is in place, page 1 of the IFSP (Form 10) authorizing the assessment; [and]
   c. [The IFSP Meeting Summary Sheet Services Form; and]
   d. The primary level evaluation report
   (b) The provider who performed the assessment shall:
      1. Verbalize the assessment report with the family and shall document the contact in the assessor's notes;
      2. Provide the written report to the family and the service coordinator within the time frame established in paragraph (a) of this subsection; and
      3. Write the report in family-appropriate language that the child's family can easily understand. [free of professional jargon;]
   (c) If the time frame established in paragraph (a) of this subsec-
tion is not due to illness of the child or a request by the parent, the assessor shall document the delay circumstances in his staff notes with supportive documentation made in the child's record by the service coordinator. [assessment(c) report(e) shall be shared verbally with the family and the written report sent to the family and the service coordinator within ten (10) working days of the completion of the assessment.)

(9) [46] Information gathered in the assessment shall be used to determine the service decisions included in [develop] the IFSP Individualized family service plan [IFSP].

(9) [41] (a) Every child enrolled in First Steps shall receive an assessment as an integral part of service delivery throughout the period of the child's enrollment in the program within the limitations identified in 911 KAR 2:120 Section 4.
(b) Assessment shall be ongoing in the First Steps Program to ensure concerns and strategies are focused to meet the child and family's current needs. An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be considered therapeutic intervention, not an assessment.
(c) Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(10) [43] Ten (10) calendar days prior to the earlier of [44] Prior to the annual or [and] six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall supply progress reports [a written summary shall be provided] to the primary service coordinator and family.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be [IFSP] a contract with the family and providers. [If a service included on the IFSP shall be provided unless the family chooses not to receive the service [to ensure the services are provided].

(2) The First Steps IFSP Form shall be used to record the IFSP. For meetings that occur prior to January 1, 2004, the October 1998 IFSP form shall be used. For meetings that occur on or after January 1, 2004, the January 2004 IFSP form shall be used. Items on the IFSP form shall be completed as instructed on the form. The accompanying [completed][initial] IFSP documentation shall include [have]:

(4) Section 1.1 and assessments reports in accordance with 911 KAR 2:120, Section 1 and assessments reports in accordance with this section [All appropriate evaluation and assessment]; and
(5) Identification of [All] covered services [identified]; and
(6) Signed approval by the IFSP team that shall include individuals identified in the responsible party column of the IFSP [of the initial service coordinator].

(3) With the exception of a situation established in paragraph (b) or (a) (c) of this subsection, an IFSP form shall be used to record the IFSP. All items on the IFSP form shall be completed as instructed on the form.

(4) Each authorized IFSP shall be [be] valid for a period not to exceed six (6) months in length. An amendment that occurs [revisions that occur] to the IFSP shall be valid for the remaining period of the plan.

(5) If an IFSP is expected to expire within twenty-one (21) calendar days of a child turning age three (3), an extension of the current IFSP shall be granted if the service coordinator provides the payment authorization coordinator at the Louisville CCS/HC office with the following information:

1. A copy of the transition plan developed at the transition conference held at least ninety (90) calendar days prior to the child turning three (3);
2. A list of who attended the transition conference;
3. A copy of the IFSP that is expiring or has expired; and
4. A letter indicating that the:
   a. IFSP team agrees with the decision to extend the IFSP; and
   b. Parents are aware that they have the option of:
      i. Having an IFSP team meeting; or
      ii. Waiving their right to meet as an IFSP team.
   c. IF an IFSP team meeting cannot be scheduled and convened prior to the current IFSP expiring, an extension may be authorized if the
      service coordinator provides the following information to the
      CCS/HC:
         1. A letter requesting an extension of the current IFSP, including the dates the extension is to cover;
2. A detailed description of attempts made to hold an IFSP meeting and the reasons why the meeting cannot be held prior to the expiration of the current IFSP;
3. The scheduled date that the next IFSP meeting shall take place;
4. A copy of the current IFSP that has expired or is expiring, with amendments; and
5. Copies of the current progress reports from the IFSP team.

(d) If a family chooses not to receive a service included on the IFSP, for reasons such as illness or an [due to illness,] inability to keep an appointment, [â€œ] the service provider shall document the circumstances in its staff notes and inform the IFSP team of the reason for the withdrawal.

(4) [6] The following [principles] shall be adhered to in the development and implementation of the IFSP, IFSP team members shall:

(a) Provide [Infants and toddlers are uniquely dependent on their families for their survival and nurturance. This dependency necessitates] a family-centered approach to early intervention;
(b) [Early intervention, cultural, and socioeconomic diversity of families;]
(c) [Show The diversity of family patterns and structures. Each family has its own structure, roles, values, beliefs, and coping styles; respect for and acceptance of the [this] diversity [as a cornerstone] of family-centered early intervention;
(d) Allow families [Provide families with the ability to in the context of the IFSP process, in respect to the autonomy, independence, and decision-making families must be able] to choose the level and nature of early intervention's involvement in their lives;
(e) Facilitate and promote 'family and professional collaboration and partnerships are the keys to family-centered early intervention and to successful implementation of the IFSP process;
(f) Plan and implement the IFSP using a team approach [No-one (1) agency or discipline can meet the diverse and complex needs of infants and toddlers with special needs and their families. Therefore, a team approach to planning and implementing the IFSP is necessary.]
(g) An enabling approach to working with families requires that professionals reexamine their traditional roles and practices and develop new practices as appropriate when necessary] that promote mutual respect and partnerships;
(h) Ensure that First Steps services are [shall be] flexible, accessible, and responsive to family-identified needs; and
(i) Ensure [First Steps services shall be provided according to the normalization principle] that families [should] have access to services provided in a normal fashion and environment as possible and that promote the integration of the child and family within the community.

(5) [6] For a child that has been evaluated for the first time and determined eligible in accordance with 911 KAR 2:120, a meeting to develop the initial IFSP shall:

(a) be conducted within forty-five (45) days after the point of entry receives [acceptance of] referral [for);
(b) The IFSP meeting does not occur within forty-five (45) days due to illness of the child or approval to delay by the parent, the delay circumstances shall be documented on the IFSP.
(6) The IFSP shall be reviewed:

(2) A review of the IFSP for a child and the child's family by convening a meeting [shall be conducted] at least every six (6) months. IFSP team meeting shall be convened [a review shall be conducted] more frequently if:

(a) The family requests [request] a review; or
(b) The child's condition changes; [condition change]; or
(c) For IFSP meetings that occur before January 1, 2004 and except for a situation established in subsection (7)(a) or (7) of this section, a service provider identified on the IFSP form changes; or
(d) Except for a situation established in subsection (7)(c) of this section, a member of the IFSP team determines there is a need to increase the intensity, frequency or duration of a service.

(7) An IFSP may be amended without a meeting in accordance with the procedures established in paragraphs (b) and (c) of this subsection if:

1. A child is discharged from: A service due to achieving developmental milestones in
that area; or
b. The First Steps Program;
2. There is a decrease in the frequency, intensity or duration of a service;
3. The frequency of a service increases but not the number of units, such as changing from once a week for one (1) hour to twice a week for thirty (30) minutes;
4. A member of the IFSP team determines that an additional assessment is needed;
5. The family requests transportation services;
6.a. A service provider will be on leave;
b. The current IFSP indicates who the replacement shall be;
c. The replacement provider does not change the outcomes identified on the current IFSP; and
d. The family agrees;
7.a. A primary service coordinator changes at the request of the previous primary service coordinator does not change the outcomes identified on the IFSP; and
c. The family agrees to the primary service coordinator change; and
d. The primary service coordinator notifies the team members of the change;
8. A team member changes their provider numbers and the family wishes to retain that team member's services; or
9. An assistive technology device is ordered after an IFSP meeting was held at which the team members agreed that a specific assistive technology device was needed and strategies and activities were identified in the plan to meet the outcomes. (The service provider changes.)
(b) If a change identified in paragraph (a) of this subsection occurs prior to January 1, 2004, the service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining the approval on the IFSP. Additionally, the team members shall document the contact and approval in their staff notes.
(c)1. Except for the change identified in paragraph (a)4 of this subsection, if a change identified in paragraph (a) of this subsection occurs on or after January 1, 2004, the service coordinator shall meet with the parent of the child to obtain written approval prior to effecting the change. Approval from other IFSP team members shall be required. 
2. If the change identified in paragraph (a)4 of this subsection occurs on or after January 1, 2004, the service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining the approval on the IFSP. Additionally, the team members shall document the contact and approval in their staff notes. (An IFSP meeting to amend the IFSP shall not be required; however, the service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining the approval on the IFSP, as well as the team members documenting the contact and approval in their staff notes, if:)
(a) A child is discharged from:
1. A service due to achieving developmental milestones in that area;
2. The First Steps Program;
(b) There is a decrease in the frequency, intensity or duration of a service;
(c) The frequency of a service increases but not the number of units, such as changing from once a week for one (1) hour to twice a week for thirty (30) minutes;
(d) A member of the IFSP team determines that an additional assessment is needed;
(e) The family requests transportation services;
(f) A service provider will be on leave;
(g) The current IFSP indicates who the replacement shall be;
h. The replacement provider does not change the outcomes identified on the current IFSP; and
4. The family agrees;
5. A primary service coordinator changes at the request of the previous primary service coordinator or the family;
6. The replacement primary service coordinator does not change the outcomes identified on the IFSP;
7. The family agrees to the primary service coordinator change; and
4. The primary service coordinator notifies the team members of the change;
(h) A team member changes (employer or becomes an independent provider) provider numbers and the family wishes to retain that team member's services; or
(i) An assistive technology device is ordered after an IFSP meeting was held at which the team members agreed that a specific assistive technology device was needed and strategies and activities were identified in the plan to meet the outcomes. (The service provider changes.)
(b) A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and to revise if changes have occurred;
9. With the approval of the family, the primary service coordinator shall arrange a conference to discuss the possible transition of the family from the program [child]. The conference shall be conducted at least ninety (90) days before the child's third birthday and shall include:
(a) The family;
(b) A representative of the local education agency and representatives of other potential settings;
(c) The primary service coordinator as a representative of the First Steps Program;
(d) Others identified by the family; and
e. Current service provider.
(9) (448) The IFSP shall include:
(a) A summary of the family rights handbook;
2. A [ ] signed statement of [and signed] assurances by the family; [ ]
3. A statement signed by the parent that complies with KRS 200.086(4)(6); [98-56];
(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:
1. Physical development that includes fine and gross motor skills:
[a. Vision;
(b. Hearing;
(c. Fine and gross motor skills; and
d. Health status and immunization of the child;
2. Cognitive development that include skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;
3. Communication development that includes skills related to exchanging information or feelings[ ]; including receptive and expressive communication and communication with peers and adults;
4. Social and (or) emotional development that includes (include) skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. These include [This includes]:
a. Parent and infant bonding;
b. Interactions with peers and adults;
c. [ ] Play skills;
d. [ ] Self-concept development; and
e. [ ] Bonding with family members;
f. Adaptive development that includes self-help skills necessary for independent functions[ ] that include:
[a. Self-feeding;
b. Toileting; and
c. Dressing and grooming and
d. Physical development that shall be documented annually and that shall include:
[a. Vision;
b. Hearing;
c. Health status; and
d. If present, the established risk condition;
(c) Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;
de. A description of:
1. Underlying factors that may affect the child's development;
and
2. What motivates the child, as determined on the basis of observation, child interaction and parent report;
(e) With concurrence of the family, a statement of the family's
resources, priorities and concerns related to enhancing the development of the child;

(f) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time frame used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome and strategy statements shall:

a. [4] Be functionally stated;

b. [4] Be representative of the family’s own priorities;

c. [4] Be fit naturally into the family’s routines or schedules;

d. [4] Reflect the use of the family’s own resources and social support network; and

e. [6] Be flexible to meet the child and family’s needs in expanded current and possible future environments; and

2. Strategy and activity statements that shall be practical suggestions that assist the family and other team members in achieving the family’s desired outcome for the child and family.

a. Typically, strategies shall refer to the steps or methods a family and team will use to accomplish the outcomes;

b. Activities shall refer to what will be done to embed strategies into the routines or regular events that occur in the child’s natural environment; and

c. The strategies and activities area shall include criteria of how the outcomes shall be measured to determine mastery or progress and shall be developmentally appropriate, functional, valued by others, realistic and achievable and promote generalized use of skill;

3. The specific First Steps services necessary to meet the unique needs of the child and family to achieve the outcomes. Service documentation shall (see section 4) be stated in frequency, intensity, duration, location and method of delivering services, and shall include (in the) payment arrangements, if any; [6]

2. With the exception of group intervention, and unless prior authorization is granted in accordance with 911 KAR 2:200, Section 4, based on individual needs of the child, the frequency and intensity for therapeutic intervention for each child shall:

a. not exceed one (1) hour per discipline per week for the following disciplines:

   b. [6] RN or LPN (Family therapist, nurse or LPN, or health aide);
   c. [6] Nutritional or dietician;
   d. [6] Occupational therapist or occupational therapist assistant;
   e. [6] Orientation and mobility specialist;
   f. [6] Physician;
   g. [6] Physical therapist or physical therapist assistant;
   h. [6] Psychologist, certified psychologist with autonomous functioning, psychological associate, family therapist, or licensed social worker;
   i. [6] Speech language pathologist or speech language pathologist assistant;
   j. [6] Licensed social worker;
   k. [6] Teacher of the visually impaired;
   l. [6] Teacher of the deaf and hard of hearing; or
   m. [6] Developmental Interventionist [developmental assistant];

   or developmental associate; [6]

b. To request prior authorization for exceeding limits the following process shall be utilized:

(i) Send written request with copy of IFSP and documentation of need to the First Steps state office.

(ii) The state coordinator will forward to the state best practice review panel.

(iii) Complete process within ten (10) working days of receiving request.

(iv) The decision of the state panel may be appealed to the state First Steps coordinator or directly pursuant to 911 KAR 2:170.

(v) The decision of the First Steps coordinator may be appealed pursuant to 911 KAR 2:170.

3. A description of describe the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

b. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child’s natural environment; and

c. How the child’s services may be integrated into a setting in which other children without disabilities participate; and [6]

4. If the service cannot be provided in a natural environment, the IFSP shall be documented with the reason; [6] To the maximum extent appropriate and feasible, services shall be provided in natural environments, including the home and community settings, in which children without disabilities participate;

(h) The projected dates for initiation of the services, and the anticipated duration of those services;

(i) Other services that the child needs, such as medical services or housing for the family, that are not early intervention services but that are not required under IDEA, are included. The funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(i) The name of the primary service coordinator chosen to represent the child’s or family’s needs. The Primary Service Coordinator shall (see section 4) be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 911 KAR 2:140, Section 1.6;

2. The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate;

1. With the approval of the family, a transition conference shall occur at least ninety (90) days prior to the child’s third birthday;

2. The transition conference shall involve:

a. IFSP team members;

b. [staff from the First Steps Program, the primary service coordinator, the family. Staff from other local public educational agency; [6]

and

c. Other agencies at the family’s request that could be potential service agencies after the child turns age 3.

3. The conference shall be held prior to the third birthday to (3) and to write a plan, through the IFSP, for transition. The service coordinator shall chair this meeting;

(i) Documentation substantiating the following if the child is being provided group intervention:

1. If the child is enrolled in day care or attending a group during normal routines, why the therapeutic intervention cannot be provided in the child’s current group setting.

2. Therapeutic intervention during group shall be directly related to the child’s individualized strategies and activities as identified on the IFSP.

(10) If the IFSP team determines that a therapeutic intervention shall be provided using a transdisciplinary team approach, the IFSP, provider notes and progress documentation shall include:

(a) Which disciplines are providing the therapy using this approach;

(b) Evidence of transdisciplinary planning and practice, including documentation of how role-reuse is occurring;

(c) How the skills are being transferred so that one (1) provider is capable of providing the services previously provided by the team;

and

(d) That the service is individualized to the particular family and child’s needs;

and

(e) If more than one (1) provider is present and providing therapeutic intervention services at the same time using a cotreatment approach, the providers shall clearly reflect on the IFSP and staff notes;

1. Why this approach is being used;

2. The outcomes and activities;

3. Who is performing what activities; and

4. That the service providers involved are providing therapeutic intervention at the same time. [This meeting shall be chaired by the primary service coordinator;]

(11) The family (Families) shall be encouraged to discuss their child’s activities, strengths, likes and dislikes, exhibited at home; [6]

(12) The IFSP shall highlight the child’s abilities and strengths, rather than focusing just on the child’s deficits; [6]

(13) Every attempt shall be made to explain the child assessment process by using language the family uses and understands.
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(14) The families may agree, disagree, or refuse the assessment information. [8]

(15) The family's interpretation and perception of the assessment results shall be ascertained and the family's [families'] wishes and desires shall be documented as appropriate.

(16) If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless the IFSP team considers the recommendation, verifies that it relates to a chosen outcome, and agrees to it.

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

(a) First Steps Individualized Family Service Plan (IFSP), October 28, 1998; and

(b) First Steps Individualized Family Service Plan (IFSP), January 2004 [reincorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission for Children with Special Health Care Needs, 992 Eastern Parkway, Louisville, Kentucky 40217, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 4. (3) The provisions included in the administrative regulation shall be effective with services provided on or after October 1, 2003.

JAMES GILDERSLEEVE, Chair
ERIC FRIEDLANDER, Executive Director
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: June 24, 2003
FILED WITH LRC: June 27, 2003 at noon

CABINET FOR HEALTH SERVICES
Commission for Children with Special Health Care Needs Health and Development Division
(As Amended at ARRS, August 7, 2003)

911 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program services.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health Services [as directed by KRS 200.660 to 200.675] to administer [all] funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made [by the First Steps Program] on behalf of eligible recipients.

Section 1. (Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Commercial transportation carrier" means a commercial carrier, including a taxi cab, that is licensed to transport a member of the general public.

(3) "Direct contact" means an activity or contact that is:

(a) Face to face or by telephone, with the child or on behalf of the child, with the parent, family, or person in custodial control, a professional or other service provider, or other significant person, and

(b) Not the direct supervision of a paraprofessional by a professional.

(4) "First Steps" means Kentucky's early intervention system as established by KRS 200.650 through 200.676.

(5) "Noncommercial group carrier" means a vendor who provides bus or bus-type transportation to an identifiable segment of the population eligible for service from the carrier.

(6) "Period of eligibility" means the date the child was determined eligible to the date of the child's third birthday or prior to the child's third birthday, to the date the child is determined ineligible.

(7) "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes, who uses that vehicle for the transportation of eligible children.

(8) "Provider" means an agency, person, or other entity that meets the requirements for approval as established in 911 KAR 2:100 through 911 KAR 2:180 and who signs an agreement with the Commission for Children with Special Health Care Needs (CCSCHN).

(9) "Therapeutic intervention" means:

(a) Treatment of the child or intervention with the child in the context of caregivers and environment; and

(b) Not consultation and liaison.

(10) "Usual and customary charges" means the uniform amount which the individual provider charges in the majority of the cases for a specific service.

Section 2. (Participation Requirements. (1) An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1)(a) [Submit to an annual review by the Commission for Children with Special Health Care Needs (CCSCHN), or its agent, for compliance with 911 KAR Chapter 2 through 911 KAR 2:180 and this administrative regulation];

(2)(a) [Meet the qualifications for a professional or paraprofessional established in 911 KAR 2:150; or]

(b) Employ or contract with a professional or paraprofessional [staff] who meets the qualifications established in 911 KAR 2:150;

(3)(c) Ensure that a professional or paraprofessional employed by the provider who [1]

1. That each professional or staff who is employed by the provider and provides a service in the First Steps Program shall attend [a maximum of one (1) day, not to exceed an eight (8) hour period,] training on the First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services; and

2. That each professional or staff who is employed by the provider and presently providing a First Steps service shall have evidence of equivalent training;

(4)(d) Agree to provide First Steps services according to an individualized family service plan as required in 911 KAR 2:130;

(5)(e) Agree to maintain and to submit to the CCSCHN [and to maintain all required information records, and reports to insure compliance with 911 KAR Chapter 2 through 911 KAR 2:180 and this administrative regulation];

(6)(f) Establish a contractual arrangement with the Cabinet for Health Services for the provision of First Steps services; and

(7)(g) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

(2) The CCSCHN shall grant provider approval for participation to a provider who meets the criteria established in subsection (1) of this section.

Section 2. (Reimbursement. The CCSCHN shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the [preestablished] fixed upper limit established in this section for the service being provided [taking into consideration information available to the CCSCHN with regard to cost and the CCSCHN's estimate as to the amount necessary to secure the service].

(1) A charge submitted to the CCSCHN shall be the provider's usual and customary charge for the same service.

(2) The fixed [preestablished] upper limit [fee] for services shall be as follows:

(a) Primary service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of the child, with the parent of the [a parent, family or person in custodial control of a] child, a professional or other service provider, or other significant person in the family's life. [1]
1. In the office, the fee shall be sixty-one (61) [sixty-five (65)] dollars per hour of [direct contact] service.
2. In the home or community site, the fee shall be eighty-three (83) [eighty-eight (88)] dollars per hour of [direct contact] service.

(b) Initial service coordination, initial service coordination shall be provided by face-to-face contact, in accordance with 411 KAR 2:100, Section 3.5 or by telephone on behalf of a child, with the parent of the [a parent, family, or person in custodial control of a child, a professional, or other service provider, or other significant person.]

1. In the office, the fee shall be sixty-eight (68) dollars per hour of [direct contact] service.
2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of [direct contact] service.

(c) Primary level evaluation. The developmental component of the primary level evaluation shall be provided by face-to-face contact with the child and parent [as defined in 411 KAR 2:100], [c]
1. In the office or center-based site, the fee shall be $25 (250) per service event.
2. In the home or community site, the fee shall be $25 (50) per service event.

(d) Intensive clinic evaluation. The intensive level evaluation shall be provided by face-to-face contact with the child and parent [as defined in 411 KAR 2:100], [c]
1. In the office or center-based site, the fee shall be $1,100 (4,000) per service event.
2. In the community site, the fee shall be $1,100 (4,000) per service event.

(e) Service assessment:
1. For an audiologist:
   a. In the office or center-based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $12 per hour of direct contact service.
2. For a family therapist:
   a. In the office or center-based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $25 (250) per hour of direct contact service.
3. For a licensed psychologist or certified psychologist with autonomous functioning:
   a. In the office or center-based site, the fee shall be $207 per hour of direct contact service.
   b. In the home or community site, the fee shall be $20 (250) per hour of direct contact service.
4. For a developmental interventionist:
   a. In the office or center-based site, the fee shall be eighty-three (83) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $16 per hour of direct contact service.
5. For a registered nurse:
   a. In the office or center-based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $12 per hour of direct contact service.
6. For a nutritionist:
   a. In the office or center-based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $12 per hour of direct contact service.
7. For a dietitian:
   a. In the office or center-based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $12 per hour of direct contact service.
8. For an occupational therapist:
   a. In the office or center-based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $12 per hour of direct contact service.
9. For an orientation and mobility specialist:
   a. In the office or center-based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.
   b. In the home or community site, the fee shall be $12 per hour of direct contact service.

(f) (g) Therapeutic intervention, service assessment, or [and] collateral services in accordance with Section 3(3), (4), (6), and (7) of this administrative regulation:
1. For an audiologist:
   a. In the office or center-based site, the fee shall be:
      i. Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-three (63) [seventy (20)] dollars per hour of [direct contact] service; or [i]
      ii. Cotreatment shall be thirty-two (32) dollars per hour of service.
   b. In the home or community site, the fee shall be:
      i. Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-nine (89) [ninety-four (94)] dollars per hour of [direct contact] service; or [i]
      ii. Cotreatment shall be forty-five (45) dollars per hour of service.
2. For a family therapist:
   a. In the office or center-based site, the fee shall be:
      i. Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-three (63) [seventy (20)] per hour of [direct contact] service; or [i]
      ii. Cotreatment shall be thirty-two (32) dollars per hour of service.
   b. In the home or community site, the fee shall be:
      i. Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-nine (89) [ninety-four (94)] dollars per hour of [direct contact] service; or [i]
      ii. Cotreatment shall be forty-five (45) dollars per hour of service.
3. For a licensed psychologist or certified psychologist with autonomous functioning:
   a. In the office or center-based site, the fee shall be:
      i. Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be $139 (455) per hour of [direct contact] service; or [i]
      ii. Cotreatment shall be seventy (70) dollars per hour of service.
   b. In the home or community site, the fee shall be:
      i. Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be $205 (220) per hour of [direct contact] service; or [i]
      ii. Cotreatment shall be $102 per hour of service.
4. For a certified psychological associate:
   a. In the office or center-based site, the fee shall be:
(i) [Service assessment.] Collateral service or a therapeutic intervention other than cotreatment shall be $104 [440] per hour of [direct-contact] service; or [6].
   (ii) Cotreatment shall be fifty-two (52) dollars per hour of service.
      b. In the home or community site, the fee for a:
         (i) [Service assessment.] Collateral service or a therapeutic intervention other than cotreatment shall be $153 [470] per hour of [direct-contact] service; or [6].
         (ii) Cotreatment shall be seventy-seven (77) dollars per hour of service.
   5. For a developmental/interventionist:
      a. In the office or center based site, the fee for a:
         (i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-one (61) [sixty-eight (68)] dollars per hour of [direct-contact] service; or [6].
         (ii) Cotreatment shall be thirty-one (31) dollars per hour of service.
      b. In the home or community site, the fee for a:
         (i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-one (81) [ninety-one (91)] dollars per hour of [direct-contact] service; or [6].
         (ii) Cotreatment shall be forty-one (41) dollars per hour of service.
   6. For a developmental associate:
      a. In the office or center based site, the fee for a:
         (i) [Service assessment.] Collateral service or a therapeutic intervention other than cotreatment shall be forty-five (45) [fifty-one (51)] dollars per hour of [direct-contact] service; or [6].
         (ii) Cotreatment shall be twenty-three (23) dollars per hour of service.
      b. In the home or community site, the fee for a:
         (i) [Service assessment.] Collateral service or a therapeutic intervention other than cotreatment shall be sixty-eight (68) dollars per hour of [direct-contact] service; or [6].
         (ii) Cotreatment shall be thirty-four (34) dollars per hour of service.
   7. For a developmental assistant, in the office or center based site, the fee shall be ten (10) dollars per hour of direct contact service.
5. For a registered nurse:
   a. In the office or center based site, the fee for a:
      (i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-three (63) [seventy (70)] dollars per hour of [direct-contact] service; or [6].
      (ii) Cotreatment shall be thirty-two (32) dollars per hour of service.
   b. In the home or community site, the fee for a:
      (i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-nine (89) [ninety-four (94)] dollars per hour of [direct-contact] service; or [6].
      (ii) Cotreatment shall be forty-five (45) dollars per hour of service.
8. For a licensed practical nurse:
   a. In the office or center based site, the fee for a:
      (i) [Service assessment.] Collateral service or a therapeutic intervention other than cotreatment shall be twenty-four (24) dollars per hour of [direct-contact] service; or [6].
      (ii) Cotreatment shall be twelve (12) dollars per hour of service.
   b. In the home or community site, the fee for a:
      (i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be thirty-two (32) dollars per hour of [direct-contact] service; or [6].
      (ii) Cotreatment shall be eighteen (18) dollars per hour of service.
9. For a nutritionist:
   a. In the office or center based site, the fee for a:
      (i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-three (63) [seventy (70)] dollars per hour of [direct-contact] service; or [6].
      (ii) Cotreatment shall be thirty-two (32) dollars per hour of service.
   b. In the home or community site, the fee for a:
      (i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-nine (89) [ninety-four (94)] dollars per hour of [direct-contact] service; or [6].
b. In the home or community site, the fee for a:
(i) [Service assessment]. Collateral service or a therapeutic intervention other than cotreatment shall be seventy (70) dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be thirty-five (35) dollars per hour of service.

16. [47.] For a speech therapist:
(a) In the office or center based site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-three (63) [sixty-three (63)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be thirty-two (32) dollars per hour of service.
(b) In the home or community site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-nine (89) [ninety-four (94)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be forty-five (45) dollars per hour of service.

17. [48.] For a speech therapist assistant:
(a) In the office or center based site, the fee for a:
(i) [Service assessment]. Collateral service or a therapeutic intervention other than cotreatment shall be forty-six (46) [fifty-two (52)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be twenty-three (23) dollars per hour of service.
(b) In the home or community site, the fee for a:
(i) [Service assessment]. Collateral service or a therapeutic intervention other than cotreatment shall be seventy (70) dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be thirty-five (35) dollars per hour of service.

18. [49.] For a social worker:
(a) In the office or center based site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-one (61) [sixty-eight (68)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be thirty-one (31) dollars per hour of service.
(b) In the home or community site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-one (61) [ninety-one (91)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be forty-one (41) dollars per hour of service.

19. [50.] For a teacher of the deaf and hard of hearing:
(a) In the office or center based site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-one (61) [sixty-eight (68)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be thirty-one (31) dollars per hour of service.
(b) In the home or community site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-one (81) [ninety-one (91)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be forty-one (41) dollars per hour of service.

20. [51.] For a teacher of the visually impaired:
(a) In the office or center based site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-one (61) [sixty-eight (68)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be thirty-one (31) dollars per hour of service.
(b) In the home or community site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-one (81) [ninety-one (91)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be forty-one (41) dollars per hour of service.

21. [52.] For a physician providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of [direct contact] service. A physician shall not receive reimbursement for therapeutic intervention.

22. [53.] For an assistive technologist specialist:
(a) In the office or center based site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be sixty-one (61) [sixty-eight (68)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be thirty-one (31) dollars per hour of service.
(b) In the home or community site, the fee for a:
(i) Service assessment, collateral service or a therapeutic intervention other than cotreatment shall be eighty-one (81) [ninety-one (91)] dollars per hour of [direct contact] service; or
(ii) Cotreatment shall be forty-one (41) dollars per hour of service.

23. [54.] For an interpreter:
(a) Respite shall be seven (7) dollars and sixty (60) cents per hour.
(b) Integrated discipline center based services shall be fifty-six (56) dollars per hour of direct contact service.

(3) [Except as specified in subsection (4) of this section, a payment for professional or staff services listed in subsection (3) of this section shall be based on a unit of service in fifteen (15) minute increments. One (1) hour of service shall be considered four (4) units.]

(a) For therapeutic intervention, service assessment or collateral services, units shall be determined using the beginning and ending time for a service documented in staff notes in accordance with 911 KAR 2:130, Section 2(9)(g). The units shall be computed as follows:

1. Fifteen (15) to twenty-nine (29) minutes equal one (1) unit;
2. Thirty (30) to forty-four (44) minutes equal two (2) units;
3. Forty-five (45) to fifty-nine (59) minutes equal three (3) units; and
4. Sixty (60) to seventy-four (74) minutes equal four (4) units.

(b) For service coordination services, units shall be determined using the beginning and ending time for a service documented in staff notes in accordance with 911 KAR 2:130, Section 2(9)(g).

1. That shall be computed as follows:

a. [2] One (1) to twenty-two (22) minutes equal one (1) unit;
   b. [3] Twenty-three (23) to thirty-seven (37) minutes equal two (2) units;
   c. [4] Thirty-eight (38) to fifty-two (52) minutes equal three (3) units; and
   d. [5] Fifty-three (53) to sixty-seven (67) minutes equal four (4) units.

2. [6] Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the number of units used.

(4) A payment for a primary or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service.

(5) Except for an augmentative hearing device which is anticipated to cost in excess of $500, a payment for an assistive technology device, including ear molds, replacement wiring, or batteries, etc. shall be based on the actual invoiced cost, including the cost of shipping and handling, for the authorized equipment included in the individualized family service plan.

(b) If a child is determined to need an augmentative hearing device that is anticipated to cost in excess of $500, such as a hearing aid, the family shall be referred to the CCCHCN office serving the family's county of residence for action in accordance with 911 KAR 1:070. The First Steps Program shall not provide payment for an FM system.

(6) Payment for transportation shall be the lesser of the billed charge or:

a. For a commercial transportation carrier, [6] an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route (foot); or
b. The metered amount plus an administration charge not to exceed twelve (12%) percent of metered amount.

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported;
(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.
A payment for a single professional or paraprofessional group intervention service, with a minimum of one (1) professional or paraprofessional who can practice without direct supervision shall be thirty-two (32) thirty-tw0 (30) thirty-tw0 (30) dollars per child per hour of direct contact service for each child in the group, with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

A payment for a multi-professional or multi-paraprofessional group intervention service, with a minimum of two (2) professionals or paraprofessionals who can practice without direct supervision shall be forty-eight (48) dollars per child per hour of direct contact service for each eligible child in the group, with a limit of three (3) eligible children per professional or paraprofessional.

Section 3, (4)(a) Limitations. (1) For primary service coordination, payment shall be limited to no more than fifteen (15) hours (or sixty (60) units) per child per month unless preauthorized by the CCCHCN. If submitting a prior authorization request to the CCCHCN, the request shall be sent to Payment Authorization Coordinator, CCCHCN, 982 Eastern Parkway, Louisville, Kentucky 40217, and shall include:

(a) The number of additional fifteen (15) minute units requested;
(b) A copy of the current IFSP;
(c) A detailed description of how and when the additional units are to be used; and
(d) A plan for how primary service coordination will be provided in an effective and efficient manner that will prevent the future need for additional units beyond the limit of sixty (60) units of service per six (6) month period.
(2) For initial service coordination, payment shall be limited to no more than twenty-five (25) hours (or 100 units) per child per period of eligibility unless preauthorized by the CCCHCN in accordance with subsection (1) of this section.

(3) For service assessment:
(a) Payment shall be limited to no more than two and one-half (2 1/2) hours per child per discipline per assessment unless preauthorized by the CCCHCN in accordance with Section 4 of this administrative regulation.
(b) Payment shall be limited to three (3) four- (4) assessments per discipline per child per birth to the age of three (3) years unless preauthorized by the CCCHCN in accordance with Section 4 of this administrative regulation.
(c) A service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of that discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.
(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent.

(4) For therapeutic intervention, unless prior authorized by the CCCHCN in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as follows:
(a) For office and center:
1. Payment shall be limited to no more than one (1) combined hour of service per week (day) per child per discipline by a:
   a. Professional meeting the qualifications established in 911 KAR 2:150 or
   b. Paraprofessional meeting the qualifications established in 911 KAR 2:150 except that billing for a collateral service while participating in an IFSP meeting or an ARC meeting in the same day shall be allowed.
(b) For home and community sites:
1. Payment shall be limited to no more than one (1) combined hour of service per week (day) per child per discipline by a:
   a. Professional meeting the qualifications established in 911 KAR 2:150 or
   b. Paraprofessional meeting the qualifications established in 911 KAR 2:150 [for each professional or discipline and paraprofessional unless preauthorized by the CCCHCN]
2. Payment shall be limited to no more than three (3) disciplines per child per day, unless preauthorized by the CCCHCN)
3. The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) children per professional or discipline per paraprofessional per group, unless preauthorized by the CCCHCN.
(d) Payment for a service shall be limited to a service that is authorized by the entire IFSP team in accordance with 911 KAR 2:150, Section 2(6) or (7).

(e) Payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.

(f) For respite, payment shall:
1. Be limited to no more than eight (8) hours of respite per month per eligible child;
2. Not be allowed to accumulate beyond each month; and
3. Be limited to families in crisis, or strong potential for crisis without the provision of respite.

For collateral services, payment for:
(a) Attendance at one (1) ARC meeting held prior to a child's third birthday shall be limited to the service coordinator and two (2) professionals or paraprofessionals selected by the IFSP team; and
(b) Participation at an initial IFSP meeting by a primary level evaluator shall be limited to an evaluator who has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting in accordance with 911 KAR 2:120, Section 1(6)(g)(b).

Payment shall be at the collateral services rate for the discipline that the evaluator represents; and

(c) A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs shall be provided.

For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.

(b) Unless prior authorized by the CCCHCN due to a shortage of primary level evaluators:
(a) A primary level evaluator shall not be eligible to provide therapeutic intervention to a child whom he evaluated and which resulted in the child becoming eligible; and
(b) A child's annual evaluation shall be provided by a primary level evaluator who is not currently providing therapeutic intervention to that child.

Section 4, Prior Authorization Process. (1) Requests for payment for services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, CCCHCN, 982 Eastern Parkway, Louisville, Kentucky 40217 prior to the service being delivered and shall include the following:
(a) A cover letter describing:
1. Outcomes related to the request;
2. Disciplines involved;
3. Amount of time requested;
4. A description of how long the additional time is needed in order to meet the outcomes on the IFSP; and
5. A description of how the additional time will be incorporated into the child's natural environment and how skills shall be transferred to the parents, caregivers, and other members of the IFSP team;
(b) The medical component of the primary level evaluation in accordance with 911 KAR 2:120, Section 1(4)(e) [1(4)(d)], which shall include the following:
1. History;
2. Physical exam;
3. Hearing screening;
4. Vision screening; and
5. Other available reports from medical specialists;
(c) Developmental evaluation reports in accordance with KAR 2:120, Section 1(4)(o)2 [442.02], which shall include the following:
1. Primary level evaluation report; and
2. Intensive level evaluation report, if applicable;
(d) IFSP team member reports completed within the last twelve (12) months by the disciplines involved, including:
1. Assessments; and
2. Six (6) month progress reports;
(e) IFSP documents from the last twelve (12) months, including amendments;
(f) Payor of Last Resort Form, along with available supporting documentation, including:
1. Requests submitted to other payors; and
2. Responses from payor sources;
(g) Transfer of Skills Form; and
(h) Service Planning Activity Matrix Form.
(2) If the authorization panel is not in agreement regarding payment of service time beyond the one (1) hour per week:
(a) The child's IFSP team shall be asked to reconvene for a meeting;
(b) A member of the panel shall participate in the meeting to clearly convey the concerns of the panel; and
(c) If the IFSP team concludes that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. Sliding Fee. (1) Families shall pay for [as required to participate in the payment of] services based on a sliding fee scale, except that a [no] charge shall not be made for the following functions:
(a) Child find;
(b) Evaluation and assessment;
(c) Service coordination; and
(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.
(2) Payment of fees shall be for the purpose of:
(a) Maximizing available resources of funding for early intervention services; and
(b) Giving families an opportunity to assist with the cost of services where there is a means to do so, in a family share approach.
(3) The family share payment shall:
(a) Be explained to the family by the service coordinator;
(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall begin in the month of the IFSP, at the time therapeutic services are authorized, and continuing for the duration of participation in early intervention services, as determined by the:
(c) Be an income-based flat monthly fee for the duration of participation in early intervention services, as determined by:
1. Level of family gross income identified on last Federal Internal Revenue Service statement, as reported by the family, and [1] if there is a joint custody agreement in which parents have equal responsibility for the child, fifty (50) percent of each parent's income shall be considered;
2. Family size, determined by counting the number of family members in the home, excluding stepparents or other caretaker relatives. Family size shall consist of:
   a. Natural or adoptive parents; and
   b. Minor siblings or half-siblings;
3. Level of income matched with the level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:
   a. Below 200 percent of poverty, there shall be no payment;
   b. From 200 percent of poverty to 299 [300] percent, the payment shall be twenty (20) dollars per month of participation;
   c. From 300 percent of poverty to 399 [400] percent, the payment shall be thirty (30) dollars per month of participation;
   d. From 400 percent of poverty to 499 [500] percent, the payment shall be forty (40) dollars per month of participation; or
   e. From 500 percent of poverty to 599 [600] percent, the payment shall be fifty (50) dollars per month of participation; or
   f. From 600 percent of poverty and over, the payment shall be $100 per month of participation;
   g) [46] Not apply to a child receiving [children eligible for Medicaid or Kentucky Children's Health Insurance Program (KCHIP) benefit];
   (d) Not apply to a family who receives only evaluation, assessment, service coordination services or IFSP development in the initial calendar month of eligibility. The initial (primary) service coordinator shall notify the CCCHSN First Steps financial case manager immediately if the initial IFSP date is different than the month that therapeutic intervention services are started;
b) [47] Not apply to a family that does not receive services except those described in paragraph (d) of this subsection for at least one (1) month if prior authorized by the CCCHSN First Steps financial case manager in accordance with paragraph (g)(1) (46) and 2 of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs such as an unexpected hospitalization;
   (f) Not apply to a family that receives evaluation, assessment, service coordination, or IFSP development because the developmental evaluation or assessment did not reveal a developmental delay. The service coordinator shall notify the CCCHSN financial case manager immediately if this situation exists so that the family is not assessed a family share cost; or;
   (g) [48] [46] Not prevent a child from receiving services if the family shows to the satisfaction of the CCCHSN an inability to pay, in accordance with the following:
   1. The service coordinator shall submit to the CCCHSN First Steps financial case manager, on behalf of the family, a waiver request to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs. A family that has a waiver in place as of January 1, 2003 shall have the waiver reviewed at the next IFSP meeting for compliance with this section.
2. The family shall undergo a financial review by the CCCHSN that may:
   a) Adjust the gross household income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's other family members' disabilities; and
   b) [49] Result in a calculation of a new family-share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in paragraph (b) of this subsection. If a recalculation is completed, the CCCHSN shall conduct a review at least quarterly; or
   c) Suspend or reduce the family-share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The CCCHSN shall conduct a review at least quarterly;
   (h) [50] Except for a family that refuses to apply for Medicaid in accordance with subsection (6) of this section, the family share shall not apply to a family who chooses to use their private insurance if the amount of the insurance monies received and applied to the family's services in the calendar year is equal to or greater than the sum of the obligated amount of family share during the same calendar year. Refunding of family share collected in excess of the private insurance reimbursement shall occur after the end of a calendar year.
   (i) Income and insurance coverage shall be verified at six (6) month intervals, and more often if changes in household income shall result in a change in the amount of the obligated family share payment. If a change in the family share category occurs, it shall become effective the month following the month the change was reported.
   (j) A family that refuses to have its income verified shall be assessed a family share payment of $100 [fifty (50) dollars] per month of participation.
   (k) Unless there is a religious reason for not applying for Medicaid or KCHIP, a family that is potentially eligible for and refuses to
apply for Medicaid or KCHIP shall be assessed a family share payment of $100 (fifty dollars) per month of participation. A review of a child’s potential Medicaid eligibility shall occur (at the first face-to-face contact a service coordinator has with the child’s parent) after January 1, 2003 and every six (6) months. If the child is potentially eligible for Medicaid, within sixty (60) days of being advised to apply, the family shall provide the service coordinator with notification of the disposition of the inquiry into Medicaid eligibility [hereinafter].

(7) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

(8) If a family has the ability to pay the family share but refuses to do so for any (3) consecutive months, the family shall receive service coordination and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first (child shall be discharged from the First Steps Program).

(9) A family who chooses to use private insurance for payment of First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service. First Steps shall assume payment of First Steps-related coinsurance and deductibles.

(10) A provider shall bill a third-party insurance, if any, for a service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative’s response, and payment, if any, shall be maintained in the child’s record and submitted with the First Steps bill. (k) An enrolled in the Medicaid program shall bill a third-party insurance, if any, and Medicaid directly for a service covered through the Medicaid Program prior to billing First Steps. Documentation regarding the billing and payment, if any, shall be maintained in the child’s record.

(b) The CCHCN shall pursue third-party payments for a service rendered to a Medicaid eligible child by a provider not enrolled in the Medicaid Program pursuant to 921 KAR 1:001, Section 10 and 907 KAR 1:005.

Section 6. Incorporation [Incorporated] by Reference. (1) The following material is incorporated by reference:

(a) Payor of Last Resort Form, December 2002;
(b) Transfer of Skills Form, December 2002; and
(c) Service Planning Activity Matrix Form, December 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission for Children with Special Health Care Needs, 982 Easter Parkway, Louisville, Kentucky 40217, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 7. The provisions of this administrative regulation shall be enforced with services submitted for payment on or after October 1, 2003. [A family shows to the satisfaction of the CCHCN an inability to pay:]

4. By submitting to the state coordinator a request to have the amount of the family share payment reduced or be exempted from paying the family share payment; or

4. By undergoing a financial review by the CCHCN which may:

a. Adjust the gross family income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child’s disability; and

b. Result in a calculation of a new family share payment amount based on the family’s adjusted income compared to the appropriate percentage of the poverty level. If a recalculation is completed, the CCHCN shall conduct a review at least annually.

(4) Not applicable to a family who chooses to use their private insurance.

(4) A family who chooses to use its private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service. Payment of First Steps-related coinsurance and deductibles shall be assumed by First Steps.

JAMES GILDERSLEVE, Chair
ERIC FRIEDLANDER, Executive Director
MARIA R. MORGAN, Secretary
APPROVED BY AGENCY: June 24, 2003

FILED WITH LRC: June 27, 2003 at noon

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, August 7, 2003)

921 KAR 3:035. Certification process.


STATUTORY AUTHORITY: KRS 194B.050(1), 7 C.F.R. 271.4, 274.12 [.509.B.72(1)]

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Families and Children to (shall) administer a Food Stamp Program within the state. KRS 194B.050(1) requires the Secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [KRS 194B.050 provides that the Secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth.]

This administrative regulation establishes [sets forth] the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household’s circumstances [the household’s circumstances] for the entire period for which each household is certified.

(2) Certification [The] criteria shall be applicable to all households.

(3) Certain households require special or additional certification procedures as specified in Section 5 [of this administrative regulation].

Section 2. Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsections (3) and (4) of this section, a household [below, households] shall be certified for at least six (6) [three (3)] months.

(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(1)(1); and

2. Postpone verification of income and assets.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twenty-four (24) month certification as specified in subsections (2) and (4) of this section.

(3) A household shall be certified for twenty-four (24) months if all members:

(a) Are either elderly or have a disability, as defined in 921 KAR 3:010; and

(b) Have no earned income.

(c) A household may be certified for a period of six (6) months to two (2) years, as appropriate if:

1. The household cannot reasonably predict what its circumstances will be in the near future, or

2. There is substantial likelihood of frequent and significant changes in income or household status.

(d) A household composed entirely of recipients of the Kentucky Transitional Assistance Program (K-TAP), or a combination of K-TAP and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with its K-TAP or SSI enrollment data.

(e) The following households shall be certified for up to twelve (12) months:

(a) If other household circumstances are expected to remain
stable, a household composed entirely of unemployable or elderly persons with very stable income, or (b) A household whose primary source of income is from: 1. Self-employment; or 2. Regular farm employment with the same employer if: Due income cannot be readily predicted and b. Household circumstances are not likely to change.

Section 3. Certification Notices to Households. 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 specified in 521 KAR 3:030, Section 1, as follows: (1) If a [the] household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits, if the household is otherwise eligible; or (2) If [the] household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of the date of application if the household is otherwise eligible.

Section 5. Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures. (1) A household with a self-employed member [members] shall have its case processed as follows: (a) Income is annualized over a twelve (12) month period, if self-employment income: 1. [Self-employment income] Represents a household's annual income; or 2. [Self-employment income] Is received on a monthly basis which represents a household's annual support, [§] (b) Self-employment income, which is intended to meet the household's needs only for part of the year, shall be averaged over the period of time the income is intended to cover, [§] (c) [The] 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. [because the] Household has experienced a substantial increase or decrease in business. (2) A household with a boarder [boarders] shall have its case processed as follows: (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 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 follows:ineligible members shall be processed, as follows: (a) ineligible due to: 1. Intentional-program violation; 2. Failure to comply with the work requirements; or 3. Failure to comply with workforce requirements; (b) [§] Income and resources of the ineligible member shall be counted in their entirety [shall be counted] as income available to the remaining household members. [§] (c) [§] Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions. [§] (d) [§] The ineligible member shall not be included when: 1. [§] Assigning benefit levels; or 2. [§] Comparing monthly income with income eligibility standards; and (e) Comparing household resources with resource eligibility standards. (4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as follows: (a) All resources of an ineligible member [standard; ineligible due to: 1. Failure to provide a Social Security number; or 2. Ineligible alien status: a. All resources of ineligible members] shall be considered available to the remaining household members. [§] (b) [§] A pro rata share, as 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 specified in subsection (3)(c) of this section, when: a. Assigning benefit level; b. Comparing monthly income with income eligibility standards; and c. Comparing household resources with resource eligibility standards. (5) [§] A household with a nonhousehold member [nonhousehold members] shall be processed as follows: (a) With the exception of the ineligible member, the income and resources of a nonhousehold member [other than those described in subsection (3) of this section] 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 [household members and nonmembers] are combined into one (1) wage, the agency 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 [nonmembers'] share cannot be identified, [§] (c) A nonhousehold member [The nonmember] shall not be included in the household size, when determining the eligibility and benefits for the household, when: 1. Assigning a benefit level to the household; 2. Comparing monthly income with income eligibility standards; and 3. Comparing household resources with resource eligibility standards. (6) [§] A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center, as described in 7 C.F.R. 271.2, shall have his case processed as follows: (a) An eligible household shall include: 1. A narcotic addict; or b. [§] An alcoholic; and 2. [§] A child of the narcotic addict or alcoholic. (c) Certification shall be accomplished through use of the facility's [as] authorized representative, [§] (d) Food stamp processing standards and notice provisions shall apply to a resident recipient, [§] (e) A treatment center shall notify the cabinet of a change in a resident's circumstances, [agency of any changes in a resident's circumstances;] (f) Upon departure of the center, the resident shall be eligible to receive [any] remaining benefits, if otherwise eligible, [§] (g) The organization or institution shall be responsible for knowingly misrepresenting a household circumstance [circumstances]. (h) [§] A resident of a group living arrangement who is blind or
disqualified, as specified in 921 KAR 3:010, and receives retiree's, survivor's, and disabled individual's (retiree, survivor, or disabled individual) or SSI benefits shall have a case processed as follows:

(a) A resident shall apply on his own behalf or through use of the facility's authorized representative; [a]
(b) Certification provisions applicable to all other households shall be applied; and
(c) Responsibility for reporting changes depends upon who files the application:
1. If a resident applies on his own behalf, the household shall report a change in household circumstances to the cabinet [changes to the agency]; or
2. If the group living arrangement [assisted] acts as authorized representative, the group living arrangement shall report a change in household circumstances [changes].
(d) Eligibility of the resident shall remain after departure from the group living arrangement, if otherwise eligible, [and]
(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowing misrepresentation of a household circumstance, [circumstances, unless the household applied on its own behalf.]
(f) A case of a resident in [2] A resident of a shelter for battered women and children shall be [have her case] processed as follows:
   (a) The shelter shall:
      1. Have Food and Nutrition Service (FNS) authorization to redeem food 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] if necessary eligible, if she is currently included in a Federal household which contains the person who abused her; and
   (c) The cabinet shall promptly remove the resident from the former household's case, upon notification.
   (g) An SSI recipient shall have his case processed as follows:
      (a) Application may be filed at:
         1. The Social Security Administration (SSA) Office; or
         2. The local food stamp office, [a]
      (b) The cabinet shall not require an additional interview for applications filed at the SSA, [b]
      (c) The cabinet shall obtain all necessary verification prior to approving benefits; [c]
      (d) Certification periods shall conform to Section 2 of this administrative regulation, [and]
      (e) A household change in circumstance [household changes in circumstance] shall conform to Section 6 of this administrative regulation.
      (f) 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.
      (g) Student households,
   (h) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:
      1. Between age eighteen (18) and fifty (50),
      2. Physically and mentally fit, and
      3. Enrolled at least half-time in an institution of higher education.
   (i) The criteria in (a) of this subsection shall not deem a house- hold member ineligible if the member meets at least one (1) of the criteria specified in 921 KAR 3:025, Section 2(d).
   (j) Sponsored aliens.
      (a) Income of a [blank] sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:
         1. Deemed income of 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
   (k) The Food Stamp Program's gross income eligibility limit for a household equal in size to the sponsor's household [including that portion of the sponsor's and his spouse's income deemed to be that of the alien].
   2. [As] Subject to appropriate income exclusions as specified in 921 KAR 3:020. Section 3, and
   3. Reduced by the twenty (20) percent earned income disregard, if appropriate.
   (l) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income is prorated among each sponsored alien.
   (m) A portion of income, as specified in paragraph (a) of this subsection, is reduced by:
      a. Twenty (20) percent earned income disregard, if appropriate; and
      b. An amount equal to the Food Stamp Program's monthly gross income limit for a household size equal to the household size of the sponsor.
   (n) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by $1500.
   (o) The appropriate portion of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income until the alien:
      1. Becomes a naturalized citizen;
      2. Is certified as 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.
   (p) Effective October 1, 2003, deeming requirements no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with Pub.L. 107-171, (for a period of three (3) years following the alien's admission for permanent residence into the United States.)

Section 6. Reporting Changes. (1) If a household does not meet criteria specified in Section 2(d) of this administrative regulation, a certified household shall be [is] required to report a change in household circumstance within ten (10) days of the end of the month in which the change occurs.
   (2) If a certified household meets criteria in Section 2(d) of this administrative regulation, the household shall report a change in circumstance within ten (10) days of the date the change becomes known to the household.
   (3) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.
   (4) An applicable household shall report a change [all changes] related to its food stamp 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, [if changes occur after the interview but prior to receipt of the notice of eligibility within ten (10) days of the date of the notice,]

DIETRAS PARIS, Commissioner
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: June 6, 2003
FILED WITH LRC: June 10, 2003 at 11 a.m.
KENTUCKY BOARD OF LICENSURE FOR
OCCUPATIONAL THERAPY
(Amended After Comments)

201 KAR 28:060. Requirements for licensure [Regular-licensure-requirements/temporary-permit-of-OT/Ls-and-COTA].

RELATES TO: KRS 319A.100, 319A.110, 319A.130
STATUTORY AUTHORITY: KRS 319A.070(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the board to establish a procedure for the licensure of persons who wish to practice in this state as an OT/L or an OT/L [OT/L] and a COTA. This administrative regulation sets forth the procedure by which those [such] applicants shall apply for a license under the provisions of KAR Chapter 319A and the procedure for the issuance of a temporary permit by the board to an applicant.

Section 1. Licensure of an OT/L. An applicant [Applicant] [Applicants] for licensure as an OT/L [that has [have] not previously been licensed, certified, or registered in any state [OT/L] shall meet the following requirements:

1. Submit a completed "OT/L Application Form 6/2003";
2. Submit a certified copy of the applicant's transcript indicating that the applicant for an OT/L has a baccalaureate degree, post-baccalaureate certificate, or master's degree, or doctorate degree from an occupational therapy program accredited by the ACOTE or its equivalent [ACOTA];[COTA];
3. Submit a current copy of the certificate issued by the NBCOT [AOTC] stating that the applicant meets the requirements of certification as an OT/L;
4. Submit the appropriate fee for licensure as required by 201 KAR 28:110.

Section 2. Licensure of OT/L [COTA]. Applicants for licensure as an OT/L that have not previously been licensed in any state [a COTA] shall meet the following requirements:

1. Submit a completed "OT/L Application Form 6/2003";
2. Submit a certified copy of the applicant's official academic transcript indicating that the applicant has graduated from an occupational therapy assistant educational program approved by the ACOTE or its equivalent [ACOTA];
3. Submit a current copy of the certificate issued by the NBCOT [AOTC] stating that the applicant meets the requirements of certification as a COTA;
4. Submit the appropriate fee for licensure as required by 201 KAR 28:110.

Section 3. Licensure of Persons Licensed, Certified, or Registered In Other States. An applicant for licensure as an OT/L or OT/L that is or has been licensed, certified, or registered in another state shall submit:

1. A completed "OT/L Application Form 6/2003" or "OT/L Application Form 6/2003";
2. An official copy of all licenses, registrations, or certifications from all states in which the individual has been licensed or certified;
3. An official statement from every jurisdiction in which the applicant has held a license or credential that the individual is in good standing in that jurisdiction;
4. A current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OT/L or a COTA; and
5. The appropriate fee for licensure as required by 201 KAR 28:110.

Section 4. Foreign-trainied Applicants. An applicant [Applicants] for licensure as an occupational therapist who was [were] trained at an educational facility in a country or nation other than the United States shall submit:

1. A completed "OT/L Application Form 6/2003";
2. A current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OT/L;
3. The appropriate fee for licensure as required by 201 KAR 28:110; and
4. Evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States as documented by:
   a. [i-4 form];
   b. Alien registration card;
   c. Temporary resident card; or
   d. A stamp on their passport.
5. A foreign-trained applicant who is or has been licensed, certified, or registered in another jurisdiction of the United States shall comply with the requirements of Section 3 of this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

   a. "OT/L Application Form 6/2003" and its equivalent [ACOTA];
   b. [i-4 form];
   c. Alien registration card;
   d. Temporary resident card; or
   e. A stamp on their passport.

   (2) [i-4 form];

   (3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure of Occupational Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Temporary Permit. (1) A temporary permit may be granted to applicants who are eligible to sit for the AOTC certification examination for either the OT/L or the COTA.
   (2) Upon submission of the application as provided in Section 1 or 2 of this administrative regulation, the board upon payment of the initial application fee may issue the applicant a temporary permit which shall allow the applicant for licensure to practice occupational therapy under the supervision of an OT/L in accordance with the applicable provisions of 201 KAR 28:130.

   (3) Applicants for a temporary permit shall meet the following requirements:
   (a) Submit a completed application form;
   (b) Submit official verification of the completion of educational requirements and field work requirements from a program approved by the AOTA; and
   (c) Submit a letter from an OT/L who is currently licensed and in good standing in Kentucky indicating that the OT/L is willing to assume responsibility for the supervision of the applicant.

LAURIE FARLOW, Chairperson
APPROVED BY AGENCY: August 8, 2003
FILED WITH LRC: August 14, 2003 at 11 a.m.
CONTACT PERSON: Nancy L. Black, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 504-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grave

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation sets forth the procedures and the form in which applicants must submit information required for licensure.
   (b) The necessity of this administrative regulation: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the board to establish a procedure for the licensure of persons who wish to practice in this state as an OT/L or an OT/L. This administrative regulation sets forth the procedure by which such applicants shall apply for
a license under the provisions of KRS Chapter 319A.
(c) How this administrative regulation conforms to the content of the
authorizing statutes: KRS 319A.070(3) authorizes the board to promulgate administrative regulations and KRS 319A.100 through 319A.130 sets out the requirements for licensure.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative requires persons who are seeking licensure to provide specific information to the board.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment to the administrative regulation deletes a reference to forms that have been eliminated.
(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to specify the procedures and the information required for licensure.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 319A.070(3) authorizes the board to promulgate administrative regulations and KRS 319A.100 through 319A.130 sets out the requirements for licensure.
(d) How the amendment will assist in the effective administration of the statutes: This administrative requires persons who are seeking licensure to provide specific information to the board.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 1700 persons in the Commonwealth.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The groups will look to the administrative regulation the information that must be provided to the board in order to be licensed.
(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The costs associated with the implementation of this administrative regulation are included within the general expenditures related to the board's operations and application review.
(b) On a continuing basis: The continuing costs associated with the implementation of this administrative regulation are included within the general expenditures related to the board's operations and application review.
(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) Effective date? This administrative regulation sets out the requirements for persons who are seeking initial licensure, those who are licensed in another state, and those who are foreign educated.

KENTUCKY BOARD OF LICENSURE FOR
OCCUPATIONAL THERAPY
(Amended After Comments)

201 KAR 28:130. Supervision of certified occupational therapy assistants, occupational therapy aides, occupational therapy students, and temporary permit holders.

RELATES TO: KRS 319A.010(4), (5), 319A.100
STATUTORY AUTHORITY: KRS 319A.070(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations to define appropriate supervision for persons who are delivering occupational therapy services. This administrative regulation establishes the requirements of that supervision and defines terms necessary to clarify the statutory definition of occupational therapy services. Chapter 319A, provides

that an OTA [c. COTA/L], an occupational therapy aide, student or an individual issued a temporary permit may only practice occupational therapy under supervision. This administrative regulation outlines the requirements of such supervision. General policy statement for supervision of the OTR/L (COTA) shall have the ultimate responsibility for occupational therapy delivered to any patient. Supervision shall be a shared responsibility. The supervising OTR/L (COTA) shall have a legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision. Supervision by the OTR/L (COTA) of the supervisee's provision of occupational therapy services shall always be required, even when the supervisee is experienced and highly skilled in a particular practice area.

Section 1. Definitions. (1) "Adjunct" means methods, strategies or interventions that support and advance a client's occupational therapy performance used as a precursor to enable purposeful activities or occupations.
(2) "Assistive technique" means any item, piece of equipment, or product system, whether commercially available, modified or custom designed, that is used to increase, maintain or enhance the occupational performance of an individual.
(3) "Basic activities of daily living" means tasks or activities that are oriented toward taking care of one's own body; those that are performed daily by an individual that pertain to and support one's self-care, mobility, and communication. These activities include:
(a) Bathing and showering;
(b) Bowel and bladder management;
(c) Dressing;
(d) Eating and feeding;
(e) Functional mobility;
(f) Personal device care;
(g) Personal hygiene and grooming;
(h) Sexual activity;
(i) Sleep and rest; and
(j) Toilet hygiene.
(4) "Certified hand therapist" (CHT) means a person who is certified by the Hand Therapy Certification Commission.
(5) "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including: orientation, conceptualization, and comprehension, including concentration, attention span, memory, and cognitive integration including generalization, and problem-solving.
(6) "Components of performance" means the demands of an activity which include human, object and contextual factors such as objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities.
(7) "Countersign" means the OT/L signs the client's documentation after actively reviewing the history of the intervention provided to the client and confirming that, in light of the entire intervention plan, the OT/L's entry is proper. Countersigning is more than a paper review.
(8) "Ergonomic principles" means:
(a) The study of:
1. Relationships between components of performance;
2. People as it relates to their occupations, the equipment they use and their environment; and
3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and
(b) Principles that are utilized by occupational therapists to optimize an individual's occupational performance in the areas of self-care, productivity, work and leisure and may include job analysis, consultation, and educational activities.
(9) "Face-to-face supervision" means being physically present in the room and being able to directly communicate with an individual while observing and guiding the activities of that individual, including:
(a) A review of the occupational therapy services being provided to a client that might affect the therapeutic outcomes and the revision of the plan of care for each client; and

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(b) An interactive process between the supervisor and the individual under supervision involving direct observation, collocation, dialogue, teaching, and instruction in a face-to-face setting.

(10) "Functional mobility" means moving from one (1) position to another, such as in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulational transfers.

(11) "Gait training" means the instruction of proper walking patterns.

(12) "General supervision" means an interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.

(13) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:

(a) Care of others;
(b) Care of personal effects;
(c) Child rearing;
(d) Communication device use;
(e) Financial management;
(f) Health management and maintenance;
(g) Home establishment, management, and maintenance;
(h) Meal preparation and cleanup;
(i) Safety procedures and emergency responses;
(j) Shopping; and
(k) Selection and supervision of caregivers.

(14) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the individual, society, and culture.

(15) "Performance abilities" means the utilization of performance skills in the participation of active daily life.

(16) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.

(17) "Prevention" means the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight bearing, positioning and coordination of daily living activities.

(18) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.

(19) "Remediation" means an intervention approach designed to change client variables to establish a performance skill or ability that has not yet developed.

(20) "Restoration" means to restore a performance skill or ability that has been impaired.

(21) "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration.

(22) "Supervisor" means the OT/L who is providing supervision.

Section 2. General Policy Statement for Supervision. (1) The OT/L shall have the ultimate responsibility for occupational therapy outcomes. Supervision shall be a shared responsibility.

(2) The supervision OT/L shall have the legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision.

(3) Supervision by the OT/L of the supervisee's provision of occupational therapy services shall always be required, even when the supervisee is experienced and skilled in a particular practice area. (2) "General supervision" means an interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.

(2) "Supervisor" means the OT/L who is providing supervision.

(4) "Countersign" means actively reviewing the history of the intervention provided to the client and confirming that light of the entire intervention plan, the entry is proper. Counter-signing is more than a paper review.

Section 3. [3] Supervision of Licensed [Certified] Occupational Therapy Assistants. (1) An OT/AL [COTA/AL] shall provide supportive services to assist in the practice of occupational therapy only under the supervision of an OT/L [COTA/AL].

(2) The supervisor shall provide no less than four (4) hours per month of general supervision on an OT/AL or a COTA/AL. The OT/AL or COTA/AL shall have at least one (1) direct contact hour per week of supervision for each occupational therapy assistant which shall in no case less than two (2) hours per month of face-to-face supervision.

(3) The amount of supervision time shall be prorated for a part-time OT/AL.

(4) The supervisor or the OT/AL may institute additional supervision based on the competence and experience of the OT/AL [COTA/AL]. Supervision shall be an interactive process between the OT/AL and the COTA/AL. It shall be more than a paper review or counter-signature.

(a) Assessment/reassessment. The competent of the OT/AL may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations. The OT/AL may not evaluate independently or initiate treatment prior to the OT/AL's evaluation.

(b) Treatment planning. The OT/AL and COTA/AL shall be responsible for the treatment planning. The COTA/AL may contribute to the treatment planning as directed by the OT/AL.

(c) Intervention. The OT/AL shall be responsible for the outcome of the occupational therapy intervention and for choosing appropriate intervention components in the COTA/AL.

(d) Discontinuation of intervention. The OT/AL shall be responsible for the discontinuation of intervention as directed by the COTA/AL.

(5) The supervisor [COTA/AL] shall assign the OT/AL [COTA/AL] to accept only those duties and responsibilities for which the OT/AL [COTA/AL] has been specifically trained and which the COTA/AL is qualified to perform.

(6) Specific responsibilities for supervising OT/ALs and COTA/ALs.

(a) Assessment and reassessment.

1. Client evaluation is the responsibility of the OT/L.

2. The OT/AL may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations.

3. The OT/AL may not evaluate independently or initiate therapy prior to the OT/AL's evaluation.

(b) Intervention planning.

1. The OT/AL shall take primary responsibility for the intervention planning.

2. The OT/AL may contribute to the intervention planning as directed by the OT/L.

(c) Intervention.

1. The OT/AL shall be responsible for the outcome and delivery of the occupational therapy intervention.

2. The OT/AL shall be responsible for assigning appropriate therapeutic interventions to the COTA/AL.

(d) Discontinuation of intervention.

1. The OT/AL shall be responsible for the discontinuation of occupational therapy services.

2. The OT/AL may contribute to the discontinuation of intervention as directed by the OT/L.

(7) Documentation requirements.

(a) The supervisor shall countersign all documentation recorded by the OT/AL within fourteen (14) calendar days of the notation, which documentation shall be included in the client's permanent record.

(b) The supervising OT/L and individuals under supervision shall maintain a supervising OT/L's log which shall document:
1. The frequency and type of the supervision provided; and
2. The process of supervision utilized for each client, such as observation, dialogue and discussion, and instructional techniques employed.

(a) A supervising OTL shall not have more than the equivalent of three (3) full time OTA/Ls under supervision at any one (1) time.

(b) In extenuating circumstances, when the OTAL is without supervision, the OTAL may continue carrying out established programs for up to thirty (30) calendar days under agency supervision while appropriate occupational therapy supervision is sought.

(c) It shall be the responsibility of the OTAL to notify the board of these circumstances and to submit, in writing, a plan for resolution of the situation.

(d) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the OTA/Ls under his or her [their] supervision.

Section 4. [32] Supervision of Occupational Therapy Aides. (1) An occupational therapy aide shall assist in the practice of occupational therapy only with face-to-face supervision from an OT/L or OTAL. (2) The supervising OT/L or OTAL shall be in direct verbal and visual contact with the occupational therapy aide at all times, for all therapy-related activities.

Section 5. [41] [33] Occupational Therapy Students. (1) A person practicing occupational therapy and performing occupational therapy services under KRS 319A.090(1)(c) shall be [the occupational therapy student is an unlicensed person. However, in accordance with KRS 319A.090(3), students enrolled in an AOTA accredited occupational therapy or occupational therapy assistant educational program or its equivalent.

(2) When an occupational therapy student is participating in supervised fieldwork education experiences, the student shall be assigned duties or functions commensurate with their education and training.

(3) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the students under his or her [their] supervision.

Section 6. [64] Temporary Permits. (1) A temporary permit holder shall be: (a) Supervised by an OT/L; and (b) The OT/L shall be responsible for all occupational therapy treatment outcomes.

(2) The supervising OT/L shall be available at all times to provide supervision.

(3) Face-to-face supervision shall be provided for at least thirty (30) minutes daily.

(4) The temporary permit holder who is applying for a license as an OT/L may perform all of the functions of the OT/L, with the exception of supervision.

(5) A temporary permit holder who is applying for a license as an OTAL may perform all of the functions of an OTAL, with the exception of supervision.

LAURIE FARLOW, Chairperson
APPROVED BY AGENCY: August 8, 2003
FILED WITH LRC: August 14, 2003 at 11 a.m.
CONTACT PERSON: Nancy L. Black, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233 fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for supervision of different levels of licensed and unlicensed individuals.

(b) The necessity of this administrative regulation: KRS Chapter 319A provides that a OTAL, an occupational therapy aide, or an individual issued a temporary permit may only practice occupational therapy under supervision. This administration regulation establishes the requirements for such supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319A.070(3)(i) authorizes the board to promulgate administrative regulations defining the appropriate supervision of assistants, aides, and unlicensed personnel that are delivering occupational therapy services.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets out the requirements for the supervision of persons who may be under the charge of a licensee.

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

(a) How the amendment will change the existing administrative regulation: This amendment specifies in greater detail the requirements for supervision.

(b) The necessity of the amendment to this administrative regulation: KRS Chapter 319A provides that a OTAL, an occupational therapy aide, or an individual issued a temporary permit may only practice occupational therapy under supervision. This administrative regulation establishes the requirements of such supervision.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319A.070(3)(i) authorizes the board to promulgate administrative regulations defining the appropriate supervision of assistants, aides, and unlicensed personnel that are delivering occupational therapy services.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation requires persons who are seeking licensure to provide specific information to the board.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 1700 persons in the Commonwealth.

(f) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The groups will be better able to understand what the board requires when a licensee is supervising another individual.

(g) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(c) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(d) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? This administrative regulation set out the different criteria for supervising assistants, aides, students, and temporary permit holders.

KENTUCKY BOARD OF LICENSURE FOR OCCUPATIONAL THERAPY
(Amended After Comments)


RELATES TO: KRS 319A.070(3)(d), 319A.160
STATUTORY AUTHORITY: KRS 319A.070(3)(a) (d, e) NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3) allows the board to set forth the requirements for con-
Vol. 30, No. 3, September 1, 2003

Section 1. Definitions. In this administrative regulation, the following terms shall have the meanings indicated herein: (1) "Continuing competence" means a dynamic, multidimensional process to develop and maintain the knowledge, skills, interpersonal activities and critical and ethical reasoning necessary to perform occupational therapy professional responsibilities. (2) "Continuing competence unit" means an assigned unit of measure for each continuing competence activity for which the values are given in Section 5 of the administrative regulation. (3) "Contact hour" means sixty (60) minutes engaged in a learning activity, excluding meals, breaks, and registration. (4) "CCU" means continuing competence unit.

Section 2. Continuing Competence Requirements. (1) A licensee who is applying for license renewal shall complete a minimum of twelve (12) CCUs of qualified activities for maintaining continuing competence during the preceding annual renewal period.

(2) A licensee who was previously licensed by the board and whose license has been put in inactive status, revoked, or expired for less than three (3) years shall obtain thirty-six (36) CCUs of qualified activities for maintaining continuing competence for each year in which the license has been in the status prior to receiving the license.

(3) An applicant for reinstatement or licensure who was previously licensed by the board and whose license has lapsed for more than three (3) years shall obtain thirty-six (36) CCUs of qualified activities for maintaining continuing competence and may be required by the board to fulfill additional requirements to show evidence of competence to practice as an occupational therapist or occupational therapy assistant on a case by case basis.

Section 3. Qualified Activities for Maintaining Continuing Competence. The following activities qualify for the continuing competence requirements of this administrative regulation:

(1) Continuing education courses.

(a) A licensee may earn one (1) CCU for each contact hour in continuing education courses including workshops, seminars, conferences, electronic courses, or self-study courses.

(b) Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the author or instructor;
2. Name of sponsoring organization and the location of the course; and
3. The number of contact hours attended.

2. Employer provided in-service training.

(a) A licensee may earn one (1) CCU for each contact hour of employer-provided in-service training provided by the licensee's employer.

(b) No more than six (6) CCUs of employer-provided training or continuing education may be counted towards the total number of required CCUs.

3. Courses or training that dealt with issues completely unrelated to the practice of occupational therapy shall not be counted toward the continuing competence requirements.

4. Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the instructor;
2. Name of providing organization and the location of the course; and
3. The number of contact hours attended.

5. In-service training is structured training that is offered to an employee and that is intended to maintain or enhance the employee's job performance or to meet requirements that are imposed on the employer by a credentialing body.

(3) Academic coursework.

(a) Participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy shall be counted towards the requirements of this administrative regulation.

(b) A licensee may earn six (6) CCUs per credit hour.

(c) Documentation for this activity shall include:

1. An official transcript indicating successful completion of the course and the date on which the course was taken; and
2. A description of the course from the school catalog or course syllabus.

(d) Independent study.

(a) Independent study may include reading books, journal articles, reviewing videos, and activities of a similar nature.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent in an independent study activity.

(c) Documentation for this activity shall include:

1. Title, author, and publisher of the material;
2. The time spent on the material;
3. The date of completion; and
4. A statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

5. Mentorship.

(a) Credit may be earned by each participant in a formalized mentorship agreement defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities for the participants.

(b) A licensee may earn one (1) CCU for five (5) contact hours spent in activities directly related to achievement of goals and objectives under a mentorship agreement.

(c) Documentation for this activity shall include:

1. The name of mentor and mentee;
2. A copy of a signed agreement;
3. The dates, hours spent and focus of mentorship activities; and
4. A statement outlining the outcomes of mentorship agreement.

6. Fieldwork supervision.

(a) Credit may be earned by participation as the primary clinical fieldwork educator for an OT or OTA fieldwork student.

(b) A licensee may earn one (1) CCU per forty (40) hours of supervision for each fieldwork student supervised.

(c) Documentation shall include:

1. Written verification from the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form.
2. Evaluation scores and comments should be deleted or blocked out.

7. Professional writing.

(a) Credit may be earned by the publication of a book, chapter, or article.

(b) A licensee may earn:

1. Twelve (12) CCUs as an author of a book;
2. Six (6) CCUs as an editor of a book;
3. Six (6) CCUs as author of a chapter;
4. Four (4) CCUs as author of a peer reviewed article;
5. Two (2) CCUs as author of a non-peer reviewed article;
6. Documentation for this activity shall consist of full reference for publication including, title, author, editor, and date of publication or copy of acceptance letter if not yet published.

8. Professional presentations and instruction.

(a) Credit may be earned by the presentation of academic guest lectures, state or national workshops or conferences, and employer-provider in-service training for OTAS/OTA.

(b) A licensee may earn two (2) CCUs for each hour of credit that is awarded for an activity.

(c) Documentation for this activity shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of such signed by the sponsor.

9. Research.

(a) Credit may be earned for the development of or participation in extensive scholarly research activities or extensive outcome studies.

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(b) A licensee may earn one (1) CCU for one contact hour spent working on a research project.

(c) Documentation for this activity shall include verification from the primary investigator indicating the name of research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.

(10) Grants.

(a) Credit may be earned for the development of a grant proposal.

(b) A licensee may earn one (1) CCU for one contact hour spent working on a grant proposal.

(c) Documentation for this activity shall include name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

(11) Professional meetings and activities.

(a) Participation in board or committee work with agencies or organizations in professionally related areas to promote and enhance the practice of occupational therapy may be counted toward the requirements of this administrative regulation.

(b) A licensee may earn one (1) CCU for five (5) contact hours on a committee or board.

(c) Documentation for this activity shall include:

1. The name of the committee or board, name of the agency or organization, purpose of service, and description of licensee's role and
2. The participation shall [must] be validated by an officer or representative of the organization or committee.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(12) Specialty certifications.

(a) The board shall recognize completion of activities that result in an advanced competence credential or specialty certification earned or recertified during the current renewal period.

(b) A licensee may earn up to twelve (12) CCUs for each advanced competence recognition or specialty certification earned or recertified during a renewal period.

(c) Documentation for this activity shall include a certificate of completion that identifies satisfactory completion of requirements for obtaining advanced competence recognition or specialty certification.

(13) Continuing competence plan.

(a) A licensee may earn two (2) CCUs for completion of activities related to the development and implementation of a continuing competence plan for professional development.

(b) Documentation for this activity shall include a signed document by the licensee attesting to the fact that he or she has used a formal assessment process which included the establishment of professional development goals and objectives and a portfolio approach to organize and document continuing competence activities related to the licensee's plan.

(14) Volunteer services.

(a) Credit may be earned by participation in volunteer services performed for organizations, populations, or individuals if the services maintain or enhance the licensee's competence in professional skills in the practice of occupational therapy.

(b) A licensee may earn one (1) CCU for each five (5) contact hours.

(c) Documentation for this activity shall include verification letter from organizations and report of outcomes of services provided.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

Section 4. Approval of Courses for Continuing Education Credit under Section 3(1) of this administrative regulation.

(1) A continuing education course shall be current in subject matter and relevant to the practice of occupational therapy.

(2) A continuing education course under Section 3(1) of this administrative regulation shall qualify for credit under this administrative regulation if it is approved by one of the following methods:

(a) The board shall approve a course that is administered or approved by:

1. A recognized national, state, or local occupational ther-apy association;
2. An accredited health care organization or facility;
3. An accredited college or university.

(b) A continuing education course provider who does not come within the provisions of paragraph (a) of this subsection shall submit the following information to the board at least ninety (90) days prior to the presentation of the course:

1. A thorough course description;
2. A statement of the projected learning outcomes;
3. A statement of the target audience;
4. The content focus of the course;
5. A detailed agenda for the activity;
6. A statement of the number of contact hours requested;
7. A listing of the presenters and their qualifications; and
8. A sample of the certificate of completion awarded to successful attendees.

(c) A licensee who does not come within the provisions of paragraph (a) or (b) of this subsection shall submit to the following information to the board:

1. A thorough course description;
2. A statement of the projected learning outcomes;
3. The content focus of the course;
4. A detailed agenda for the activity;
5. A statement of the number of contact hours requested;
6. A listing of the presenters and their qualifications; and
7. A sample of the certificate of completion awarded to successful attendees.

Section 5. [6] Waiver of Requirements. (1) Under extenuating circumstances, the board may waive all or part of the continuing competence activity requirements of this [these] administrative regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the board of an illness, injury, family hardship, active military service, or other similar extenuating circumstance which precluded the individual's completion of the requirements on a case-by-case basis.

Section 6. [7] Documentation and Reporting Procedures. (1) Licensees shall maintain the required proof of completion for each continuing competence activity as specified in these administrative regulations.

(2) The required documentation shall be retained by the licensee for a minimum of one (1) year following the last day of the license renewal period for which the continuing competence activities were earned.

(3) Licensees should not send their continuing competence activity documentation to the board unless audited under Section 8 of this administrative regulation or otherwise requested by the board.

Section 7. [8] Audit of Continuing Competence Activities. (1) The board shall perform a random audit of up to ten (10) percent of all licensees who shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period.

(2) A licensee who is audited shall respond to the audit within sixty (60) days of the date of the request.

(3) A licensee who fails to comply with the continuing competence activity requirements of this administrative regulation may be subject to disciplinary action that may include suspension or revocation of license.

Section 8. [9] Other Provisions. (1) A licensee [Licensees] may not carry over continuing competence activity CCUs from one (1) licensure period to the next.

(2) A licensee [Licensees] may not receive credit for completing the same continuing competence activity more than once.

LAURIE FARLOW, Chairperson
APPROVED BY AGENCY: August 8, 2003
FILED WITH LRC: August 14, 2003 at 11 a.m.
CONTACT PERSON: Nancy L. Black, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502)
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7661 to 7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is a need for federal data for this administrative regulation. This administrative regulation allows sources whose actual emissions remain less than fifty (50) percent of the major source threshold to avoid the Title V permitting process.

Section 1. Applicability. (1) This administrative regulation shall apply to sources whose potential to emit (PTE) equals or exceeds a major source threshold for the Title V Program and:
(a) Whose actual emissions during any consecutive twelve (12) months period of operation after January 1, 1996, are less than fifty (50) percent of the major source thresholds for the Title V Program; and
(b) Whose construction commenced on or before December 14, 1995, and
(c) Who do not have a Title V or conditional major permit.
(2) For purposes of this administrative regulation, a covered source shall be a source whose application for coverage under this administrative regulation has been approved by the cabinet.

Section 2. General Provisions. (1) Covered sources shall not be required to obtain a Title V or conditional major permit, except as provided in:
(a) Subsections (3) and (4) of this section; and
(b) Section 4(2) of this administrative regulation.
(2) Covered sources shall:
(a) Restrict actual emissions during each consecutive twelve (12) month period of operation after January 1, 1996, to less than fifty (50) percent of the major source thresholds for the Title V Program;
(b) Comply with the applicable notification, recordkeeping, and reporting requirements of this administrative regulation;
(c) Allow authorized representatives of the cabinet to enter the premises where a source is located or where records are kept:
(i) During normal office hours;
(ii) During all hours of operation; or
(iii) During periods of emergency;
(d) Demonstrate compliance with applicable requirements if so requested by the cabinet;
(e) Obtain a state-origin permit if required to do so under 401 KAR 52:040; and
(f) Operate in compliance with all applicable requirements.
(3) If a covered source fails to comply with a provision in subsection (2)(a) to (d) of this section [exceeds a major source threshold for the Title V Program; [exceeds a notice of violation for noncompliance with any provision in subsection (2)(a) to (d) of this section];
(a) Within twelve (12) months after a provision in subsection (2)(a) to (d) of this section is violated [major source threshold for the Title V Program is exceeded] [six (6) months after receiving notice of violation], the source shall submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and
(b) Each incidence of noncompliance shall be a separate violation until a Title V or conditional major permit is issued to the source.
(4) If a covered source is required to obtain a Title V permit by the U.S. EPA, the source shall submit an application under 401 KAR 52:020 within twelve (12) months after publication of the final federal rulemaking.
(5) Sources that meet the applicability criteria for this administrative regulation may voluntarily apply for a Title V or conditional major permit.

Section 3. Notification Requirements. (1) To apply for coverage under this administrative regulation, sources shall contact the Division for Air Quality, Emissions Inventory Section, at (502) 573-3382 and request coverage under this administrative regulation.
(e) If the source is already entered in the KyEIS, the division shall provide a printout of the source's current emissions data and a

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 52:080. Regulatory limit on potential to emit.
RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7661 to 7661(f)
copy of "Form DEP7008A, Application For Coverage Under 401 KAR 52:080 For Sources Currently In The KyEIS", which is incorporated by reference in Section 12(1)(a) of this administrative regulation. The source shall:

1. Verify, correct, and supplement the emissions data as instructed in the form; and

2. Return the completed form with required attachments to the address indicated on the form.

(b) If the source is not in the KyEIS, the division will provide the source with a copy of "Form DEP7008B, Application For Coverage Under 401 KAR 52:080 For Sources Not Currently In The KyEIS", which is incorporated by reference in Section 12(1)(b) of this administrative regulation. The source shall:

1. Provide source information and emissions data as specified in the instructions to the form; and

2. Return the completed form with any required attachments to the address indicated on the form.

(2) The cabinet shall review the completed form and attachments and shall notify the source within sixty (60) days after receipt that the source:

(a) Is approved for coverage, or

(b) Is not approved for coverage. If the source is not approved for coverage, the cabinet shall explain the reason why and specify the action the source is required to take.

Section 4. Changes at a Covered Source. [Reconstruction or Modification.] Prior to making a change, a covered source [that plans to reconstruct or modify] shall comply with this section.

(1) If the source plans to make a change that will not cause its actual emissions during any consecutive twelve (12) month period of operation to be greater than 50 percent of the major source threshold for the Title V Program:

(a) The source shall:

1. Contact the Division for Air Quality, Emissions Inventory Section, at (502) 573-3382 and request a copy of Form DEP7008A; and

2. Return the completed form with any required attachments to the address indicated on the form.

(b) The source may make the change immediately upon submittal of Form DEP7008A with any required attachments.

(c) The cabinet shall review the completed form and attachments and shall notify the source within sixty (60) days after receipt that the source:

1. Continues to be approved for coverage; or

2. Is no longer approved for coverage. If the source is no longer approved for coverage, the cabinet shall explain the reason why and specify the action the source is required to take.

(2) If the source plans to make a change that will cause its actual emissions during any consecutive twelve (12) month period of operation to be fifty (50) percent or more of a major source threshold for the Title V Program, the source shall:

(a) Contact the Division for Air Quality, Permit Support Section, at phone (502) 573-3392 or fax (502) 573-3787 and inform the division of its intent;

(b) Submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and

(c) Comply with the requirements of this administrative regulation until the source is issued a Title V or conditional major permit.

Section 5. General Recordkeeping Requirements. (1) Covered sources shall maintain records as specified in this section and in the applicable provisions of Sections 6 to 10 of this administrative regulation.

(2) Records shall be sufficient to determine actual emissions for each emission unit and shall be:

(a) Maintained for a period of five (5) years from date of the last entry; and

(b) Made available on request for inspection by the cabinet or the U.S. EPA.

(3) If groups of similar units are connected in series, records may be kept for the group rather than each unit.

(4) Records shall:

(a) Be summarized each month and added to the previous eleven (11) months to provide a total of actual emissions for each consecutive twelve (12) month period; and

(b) Demonstrate that the source's actual emissions during each consecutive twelve (12) month period are less than fifty (50) percent of the major source thresholds; and

(c) Contain additional information which the cabinet may request.

Section 6. Recordkeeping for Sources That Use Coatings, Solvents, Inks, or Adhesives. These sources shall maintain the following records:

1. [A current list of all coatings, solvents, inks, and adhesives used, with the following information for each:

(a) Manufacturer and brand;

(b) Product name or CAS number;

(c) VOC content in grams per liter or pounds per gallon; and

(d) HAPs content in grams per liter or pounds per gallon.

2. In lieu of the records required in paragraph (a) of this subsection, a source may substitute the following:

(a) Manufacturer's product specifications;

(b) Material VOC content reports; or

(c) Laboratory analyses that provide the same information;

(d) A description of all equipment used during and after coating or solvent application, including:

(a) Type;

(b) Make and model;

(5) Maximum design pressure or throughput;

(6) Type and description of control devices; and

(7) Description of application and drying methods used;

(3) A monthly log of the amount of each coating, solvent, ink, and adhesive used, including solvents used for purging, clean-up, and surface preparation;

(4) All purchase orders, invoices, and other documents that support the information in the monthly log; and

(5) Additional information which the cabinet may request.

Section 7. Recordkeeping for Sources That Use Organic Liquid Storage Units. These sources shall maintain the following records:

1. A monthly log identifying the name and amount of liquid stored and used; and

2. Information on the tank design and specifications, including control equipment.

Section 8. Recordkeeping for Sources That Have Combustion Emissions. These sources shall maintain the following equipment and fuel usage records:

1. Description of equipment type, make, and model;

2. Maximum design rate for both process and control device, or maximum power input and output;

3. Minimum operating temperature and residence time of thermal oxidizers;

4. All source test information;

5. Control device efficiency, obtained from manufacturer's specifications or stack test;

6. A monthly log of hours of operation, fuel type and usage, fuel heating value, percent nitrogen for coal, and percent sulfur for fuel oil and coal. For nonfossil fuels, heating value shall be expressed in BTU/pound or BTU/gallon; and

7. Additional information which the cabinet may request.

Section 9. Emission Control Unit. Sources having emission control units shall maintain the following records:

1. Information on equipment type and description, make and model, and identification of emission units served by each control device;

2. Information on equipment design, including the following as applicable:

(a) Pollutants controlled;

(b) Control device efficiency for each pollutant, taken from manufacturer's specifications or stack test;

(c) Maximum design or rated capacity for both process and control device;

(d) Inlet and outlet temperatures;

(e) Concentrations of each controlled pollutant;

(f) Catalyst data, including type, material, life, volume, space velocity, and ammonia injection rate and temperature;
(g) Baghouse data, including design cleaning method, fabric material, flow rate, and air-to-cloth ratio;
(h) Electrostatic precipitator data, including number of fields, cleaning method, and power input;
(i) Scrubber data, including type, design, sorbent type, pressure drop, liquid and gas flow rates, and PH;
(j) Other design data if appropriate; and
(k) All source test information;
(3) A monthly log of hours of operation, including notes on:
(a) Control equipment breakdowns;
(b) Upsets;
(c) Repairs;
(d) Maintenance; and
(e) Other deviations from design parameters; and
(4) Additional information which the cabinet may request.

Section 10. Recordkeeping for Sources Not Described in Sections 8 to 8 of this Administrative Regulation. These sources shall maintain the following records:
(1) Information describing the process and equipment including:
(a) Equipment type and description;
(b) Make and model;
(c) Maximum design process rate or throughput; and
(d) Type and description of control devices including flow rates, temperature, and control device efficiency for each pollutant.
(2) A monthly log of the following:
(a) Hours of operation;
(b) Amount and description of each raw material used;
(c) Amount and production rate of each product produced;
(d) Purchase orders, invoices, and other documents that support the monthly log; and
(e) Additional information which the cabinet may request.

Section 11. Reporting Requirements. At the beginning of each calendar year, the cabinet shall mail a printout of the latest emission inventory data in the KyEIS to each covered source. On receiving the printout the source shall:
(1) Update the emissions information;
(2) Certify the report as true and accurate; and
(3) Return the report to the cabinet within thirty (30) days from the date that the printout is mailed to the source.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Form DEP7000A, Application for Coverage Under 401 KAR 52:00:00 for Sources Currently In The KyEIS," and
(b) "Form DEP7000B, Application for Coverage Under 401 KAR 52:00:00 for Sources Not Currently In The KyEIS."
(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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;
(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, 3320 Twelfth Street, Ashland, Kentucky 41102 (41406), (606) 299-5285; [020-2062];
(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;
(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4293; [002-6411];
(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
(f) London Regional Office, 875 S. Main Street, London, Ken
tucky 40741, (606) 878-0157;
(g) Owensboro Regional Office, 303 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 867-7304;
(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42001, (270) 898-8488; and
(i) Frankfort Regional Office, 843 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

HENRY C. LIST, Secretary
APPROVED BY AGENCY: July 25, 2003
FILED WITH LRC: July 29, 2003 at 2 p.m.
will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The amendment will enable the U.S. EPA to approve this administrative regulation into Kentucky’s SIP. Approximately 60-70 sources in Kentucky currently meet the requirements of and are complyng with the existing administrative regulation. However, since the existing administrative regulation is not approved into Kentucky’s SIP, these sources still have the obligation to apply for and receive a Title V permit. After the U.S. EPA approves this administrative into Kentucky’s SIP, these source will no longer be required to meet this obligation. Additionally, the amendment will allow the cabinet to extend coverage under this administrative regulation to additional sources that meet the applicability determination of Section 1. This will pick up similar sources that constructed after December 14, 1995, and those that may construct in the future, and will relieve them from the obligation of applying for and receiving Title V permits.

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

(a) Initially: The division will incur any additional costs to implement the provision.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The division's operating budget will be used to implement and enforce the proposed amendments to the 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 the proposed amendments to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The administrative regulation allows major sources, whose actual emissions do not exceed 50% of the major source threshold and who comply with the specified reporting and recordkeeping requirements, to avoid the Title V permitting process. It applies equally to all sources meeting the applicability requirements and is, therefore, not tiered. However, the proposed administrative regulation does provide tiering within the cabinet's air permitting process, in that covered sources are not required to obtain federally enforceable permits, as long as they comply with the provisions of the administrative regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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.

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
Department of Workers' Claims
(Amended After Comments)


STATUTORY AUTHORITY: KRS 342.033, 342.280(1), 342.270(3), 342.285(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.001(10).

(3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Commissioner" is defined by KRS 342.001(11).

(5) "Date of filing" means the date that:

(a) A pleading, motion, or other document is received by the Commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except:

1. Final orders and opinions of administrative law judges, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion; and

2. Documents delivered to the offices of the Department of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend which shall be deemed filed the following business day; or

(b) A document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

(6) "Employer" means individuals, partnerships, voluntary associations and corporations.

(7) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.840 but has not complied with KRS 342.340.

(8) "Special defense" means defenses that shall be raised by "special answer" filed in accordance with Section 5(2)(d) of this administrative regulation.

(9) "Latest available edition" means that edition of the "Guides to the Evaluation of Permanent Impairment" which the commissioner has certified as being generally available to the department, attorneys, and medical practitioners, by posting prominently at the department's hearing site the date upon which a particular edition of the "Guides to the Evaluation of Permanent Impairment" is applicable for purposes of KRS Chapter 342.

(10) "Special defenses" means defenses that shall be raised by "special answer" filed in accordance with Section 5(2)(d) of this administrative regulation.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 or 342.316 shall be designated as "plaintiff". Adverse parties shall be designated as "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.

(b) The Special Fund may be joined as a defendant in accor-
dance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1996.

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and submitted in accordance with this administrative regulation.

(a) For an injury claim, an applicant shall submit a completed Form 101, Application for Resolution of Injury Claim.

(b) For an occupational disease claim other than coal workers' pneumoconiosis, an applicant shall submit a completed Form 102, Application for Resolution of Occupational Disease Claim.

(c) For a hearing loss claim, an applicant shall submit a completed Form 103, Application for Resolution of Hearing Loss Claim.

(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant. If the application is refiled in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the commissioner. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall be served upon the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the party's or representative's last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.

(4) After the application for resolution has been assigned to an administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before administrative law judge (name)". Upon consolidation of claims, the most recent claimant number shall be listed first.

(5)(a) All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(5) A motion, other than an application pursuant to KRS 342.125 or for interlocutory relief, shall be considered ten (10) days after the date of filing. A response shall be considered if filed on or before the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;
5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;
6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening; or
7. A certification of service that the motion was served on all parties as well as counsel for the parties.

(b) A designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.

2. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.

3. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(c)1. A motion to reopen shall not be considered until twenty-five (25) days after the date of filing.
2. Any response shall be filed within twenty (20) days of filing the motion to reopen.
3. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

(d) Any party may use the following forms provided by the department for motions to reopen:

1. Form MTR-1, Motion to Reopen by Employee;
2. Form MTR-3, Motion to Reopen by Defendant; and
3. Form MTR-2, Motion to Reopen KRS 342.732 Benefits.

(7) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request is based;
(b) Be served upon the adverse parties and the attorney's client;
(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and

(d) Be accompanied by:

1. An affidavit of counsel detailing the extent of the services rendered and the time expended;
2. A signed and dated Form 109 as required by KRS 342.320(5); and
3. A copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit of counsel detailing:

1. The extent of the services rendered and the time expended;
2. The hourly rate and total amount to be charged; and
3. The date upon which agreement was reached for providing the legal services.

(9) The following motions relating to vocational rehabilitation training provided by the department may be used by all parties:

(a) Form VRT, Petition for Vocational Rehabilitation Training; and

(b) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation.

Section 5. Application for Resolution of an Injury Claim and Response. (1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the
following:
1. A description of the injury which is the basis of the claim;
2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim;
3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;
4. Documentation substantiating the plaintiff's preinjury and postinjury wages; and
5. Documentation establishing additional periods for which temporary total disability benefits are sought.

2(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 - Injury and Hearing Loss within forty-five (45) days after the notice of the scheduling order or within forty-five (45) days following an order sustaining a motion to reopen a claim.
(b) If a Form 111 is not filed, all allegations of the application shall be deemed admitted.
(c) The Form 111 shall set forth the following:
1. All pertinent matters which are admitted and those which are denied;
2. If a claim is denied in whole or in part, a detailed summary of the basis for denial;
3. The name of each witness whose testimony may be relevant to that denial; and
4. A description of the physical requirements of plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer.
(d) In addition to the Form 111, a defendant shall file a special answer to raise any special defenses in accordance with this paragraph.

1. A defendant may incorporate special defenses that have been timely raised in the Form 111.
2. A "special answer" shall be filed within:
   a. Forty-five (45) days of the scheduling order; or
   b. Ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence.
3. A special defense shall be waived if not timely raised.
4. A special defense shall be pleaded if the defense arises under:
   a. KRS 342.035(3), unreasonable failure to follow medical advice;
   b. KRS 342.165, failure to comply with safety laws;
   c. KRS 342.316(7) or 342.335, false statement on employment application;
   d. KRS 342.395, voluntary rejection of KRS Chapter 342;
   e. KRS 342.610(3), voluntary intoxication or self-inflation of injury;
   f. KRS 342.710(5), refusal to accept rehabilitation services; or
   g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute.

Section 7. Application for Resolution of a Hearing Loss Claim and Response. (1) To apply for resolution of a hearing loss claim, the applicant shall file Form 103 with the following completed documents:
(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;
(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychologists, psychologist, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals treating for hearing loss or ear complaints;
(c) Medical release (Form 106);
(d) One (1) medical report describing the hearing loss which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician; and
(e) Social Security earnings record release form (Form 115).
(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 - Injury and Hearing Loss:
1. Within forty-five (45) days after the notice of the scheduling order; and
2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.
(b) In addition to the Form 111-OD, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.
(c) For all occupational disease and hearing loss claims, the commissioner shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date of issuance by the commissioner of the scheduling order.
(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the scheduling order;
(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and
(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.
(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge.
(4) All medical reports filed with Forms 101, 102, or 103 shall be admitted into evidence without further order if:
   a. An objection is not filed prior to or with the filing of the Form 111; and
   b. The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) A vocational report may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.
(2) Vocational reports shall be signed by the individual making the report.
(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.
(4) An objection to the filing of a vocational report shall:
   a. Be filed within ten (10) days of the filing of the notice or motion for admission; and
(b) State the grounds for the objection with particularity.
(5) The administrative law judge shall rule on the objection within fifteen (15) days.
(6) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.
(2) Medical reports shall be submitted on Form 107-I (injury), Form 107-P (psychological), Form 108-OD (occupational disease), Form 108-CWM (coal workers’ pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, except that an administrative law judge may permit the introduction of other reports.
(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.
(4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physician’s index number in lieu of attaching qualifications.
(5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.
(6)(a) Upon notice, a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.
(b) Objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or the motion for admission.
(c) Grounds for the objection shall be stated with particularity.
(d) The administrative law judge shall rule on the objection within fifteen (15) days of filing.
(7) If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for hearing loss or occupational disease other than coal workers’ pneumoconiosis shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.
(2) Upon all other claims except coal workers’ pneumoconiosis claims, the commissioner or an administrative law judge may direct appointment by the commissioner of a university medical evaluator.
(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical information to the university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:
(a) Submitted to the university within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315;
(b) Submitted by way of medical reports, notes, or depositions;
(c) Clearly legible;
(d) Indexed;
(e) Furnished in chronological order;
(f) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and
(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:
1. Identify the medical provider;
2. Include the date of medical services; and
3. Include the nature of medical services provided.
(4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the commissioner shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.
(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.
(6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.
(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation may be grounds for imposition of sanctions.

Section 12. Interlocutory Relief. (1) During a claim, a party may seek interlocutory relief through:
(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(b);
(b) Medical benefits pursuant to KRS 342.020; or
(c) Rehabilitation services pursuant to KRS 342.710.
(2) Upon motion of any party, an informal conference:
(a) Shall be held to review the plaintiff’s entitlement to interlocutory relief; and
(b) May be held telephonically.
(3) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.
(4)(a) Entitlement to interlocutory relief shall be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party:
1. Is eligible under KRS Chapter 342; and
2. Will suffer irreparable injury, loss or damage pending a final decision on the application.
(b) Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.
(5) If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm will result. The administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge’s own motion, interlocutory relief shall be terminated and the claim removed from abeyance.
(6) An attorney’s fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.
(7) A party seeking interlocutory relief may use the following forms:
(a) Motion for interlocutory relief, Form MIR-1;
(b) Affidavit for payment of medical expenses, Form MIR-2;
(c) Affidavit for payment of temporary total disability, Form MIR-3; and
(d) Affidavit regarding rehabilitation services, Form MIR-4.

Section 13. Benefit Review Conferences. (1) The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.
(2) The benefit review conference shall be an informal proceeding.
(3) The date, time, and place for the benefit review conference shall be stated on the scheduling order issued by the commissioner.
(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference.
(5) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the benefit review conference.
(6) The administrative law judge may upon motion waive the plaintiff’s attendance at the benefit review conference for good cause shown.
(7) A transcript of the benefit review conference shall not be made.
(8) Representatives of all parties shall have authority to resolve
disputed issues and settle the claim at the benefit review conference.

(a) Defendant shall provide a completed Form AWW-1, Average Weekly Wage Form.

(b) Plaintiff shall bring copies of unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatments.

(c) Each defendant shall bring copies of disputed medical bills and medical expenses.

(d) Ten (10) days before the benefit review conference, the parties shall exchange final stipulations and lists of known witnesses and exhibits that:

(a) Name each proposed witness;

(b) Summarize the anticipated testimony of each witness;

(c) For medical witnesses, include in the summary:

1. The diagnosis reached;

2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;

3. The functional impairment rating assessed by the witness; and

4. A description of any work-related restrictions imposed; and

(d) Identify any exhibits.

(11) At the benefit review conference, the parties shall:

(a) Attempt to resolve controversies and disputed issues;

(b) Narrow and define disputed issues; and

(c) Facilitate a prompt settlement.

(12) A party seeking postponement of a benefit review conference shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(13) If at the conclusion of the benefit review conference the parties have not reached agreement on all the issues, the administrative law judge shall:

(a) Prepare a summary stipulation of all contested and uncontested issues which shall be signed by representatives of the parties and by the administrative law judge; and

(b) Schedule a final hearing.

(14) Only contested issues shall be the subject of further proceedings.

(15) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the benefit review conference and the date of the hearing and may limit the number of witnesses to be presented at hearing.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

(2) A motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended.

(3) The motion or supporting affidavits shall set forth:

(a) The efforts to produce the evidence in a timely manner;

(b) Facts which prevented timely production; and

(c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(4) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(5) The granting of an extension of time for completion of discovery or proof shall:

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a plaintiff; and

2. Defendants if an extension is granted to a defendant; and

(b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in section 24 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

(3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) Opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) The commissioner shall establish a medical qualifications index.

(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.

(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.

(c) Qualifications shall be revised or updated by submitting revisions to the commissioner.

(d) A party may inquire further into the qualifications of a physician.

Section 18. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered.

(3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

(4) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

(5) A decision shall be rendered no later than sixty (60) days following the hearing.

(6) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion.

(7) An opinion or other final order of an administrative law judge shall not be deemed final until the administrative law judge has certified that a certification of mailing was sent to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall
be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 19. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a final order or award of an administrative law judge, clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.
(2) A response shall be served within ten (10) days after the date of filing of the petition.
(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 20. Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. A discount shall not be taken on past due benefits by the employer or Special Fund. Lump sum settlements shall be calculated as follows:
(a) Determine the entire lump sum liability;
1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award;
2. Discount the number of weeks remaining in the award at the prescribed discount rate;
3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subsection 2 of this paragraph) in the award. This product shall equal the entire future lump sum liability for the award; and
4. Add the amount of past due benefits to the future lump sum liability award (subsection 3 of this paragraph). The sum shall represent the entire lump sum value of the award.
(b) Determine the employer's lump sum liability as follows:
1. The employer's future liability shall be computed by determining its total weeks of liability less the number of weeks of liability past due;
2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.
3. Multiply the number of past due weeks by the amount of the weekly benefit.
4. The employer's entire liability for a lump sum payment shall be determined by adding the results of paragraph (b)2 and 3 of this subsection.
(c) Determine the Special Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder shall be the Special Fund's lump sum liability.
(2) If the employer settles its liability for income benefits with the employee for a lump sum payment and a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.
(3) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability for the claim. The Special Fund shall make all remaining payments for the balance of the compensable period.
(4) Pursuant to KRS 342.265, election by the Special Fund to settle on the same terms as the employer shall mean the Special Fund's rights to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. "Same terms" shall not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits for which the Special Fund is not liable.
(5) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(3).

(a) Pursuant to KRS 342.265(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.
(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.
(2) Time and format of notice of appeal.
(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.
(b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).
(c) The notice of appeal shall:
1. Denote the appealing party as the petitioner;
2. Denote all parties against whom the appeal is taken as respondents;
3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;
4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the workers' compensation funds as a respondent; and
5. Include the claim number.
(d) Cross-appeal.
1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.
2. A cross-appeal shall designate the parties as stated in the notice of appeal.
(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.
(f) The commissioner shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal.
(3) Number of copies and format of petitioner's brief.
(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.
(b) An original and two (2) copies of the petitioner's brief shall be filed with the Commissioner of the Department of Workers' Claims.
(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).
(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the following manner:
(a)1. The name of each petitioner and each respondent shall be included in the brief.
2. The petitioner shall specifically designate as respondents all adverse parties.
3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.
(b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.
(c) The petitioner's brief shall state the date of entry of the final award, order, or decision by the administrative law judge.
(d) The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.
(e) The petitioner's brief shall include a "Need for Oral Argument" designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.
(f) The petitioner's brief shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.
(g) The organization and contents of the petitioner's brief for review shall be as follows:
1. A brief "Introduction" shall indicate the nature of the case.
2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each issue cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.

3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An "Argument" shall:
   a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and
   b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:
   a. Copies of the final award, order, or decision of the administrative law judge from which review is being sought;
   b. Any petitions for reconsideration filed by the parties pursuant to KRS 342.281;
   c. The administrative law judge's order addressing any petitions for reconsideration;
   d. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and
   e. Copies of prior board opinions or nonfinal or unpublished opinions of the Court of Appeals or Supreme Court in accordance with subsection (9) of this section.

7. Respondent's brief, combined brief, or cross-petitioner's brief.
   a. Each respondent shall file an original and two (2) copies of a brief, combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the Commissioner of the Department of Workers' Claims.
   b. The respondent's brief shall include a "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.
   c. The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the respondent by subsection (4)(f) of this section.

8. Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

9. Reply brief.
   a. If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.
   b. The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index, or contents page shall not be required.

10. If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

11. Certification. The petitioner's brief, respondent's brief, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith.

12. Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.
   a. Before filing a notice of appeal, cross-appeal, or any brief with the Commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.
   b. Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.

13. The name of each attorney submitting a document to the Workers' Compensation Board with a current address and telephone number shall appear following its "conclusion".

14. If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief which shall address issues raised by the cross-appeal.

15. If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

16. Form of citations.
   a. All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).
   b. If a party believes that a prior decision of the board or an unpublished decision by the Court of Appeals or Supreme Court has precedential value in relation to a material issue in the case being reviewed and there is no published opinion that would serve as well, that decision may be cited if the party serves a copy on all other parties and the board.
   c. Service of an unpublished decision shall be accomplished by including a copy of the decision in the appendix for a brief filed in an appeal to the board.
   d. Citations for prior decisions of the board or unpublished decisions of the Court of Appeals or Supreme Court shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

17. Number of pages.
   a. The petitioner's brief and the respondent's brief shall be limited to twenty (20) pages each.
   b. Reply briefs shall be limited to five (5) pages.
   c. Combined briefs shall be limited to twenty-five (25) pages.
   d. The parties shall make every effort to comply with the above page limitations.
   e. Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.
   f. Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:
      a. Affirmation or reversal of the final order;
      b. Rejection of a brief that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refiling occurs, the filing shall date back to the date of the original filing;
      c. Striking of an untimely response;
      d. A fine of not more than $500; or
      e. Dismissal.
   g. Motions.
      a. Except for a brief, a motion or pleading shall require the original to be filed with the Commissioner of the Department of Workers' Claims.
      b. The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.
      c. The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.
      d. Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.
      e. Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.
      f. Before filing a motion for pleading with the Commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.
      g. The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.
(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(13) Oral arguments.
(a) Upon motion of a party or upon the board's own motion, the board may order an oral argument on the merits in a case appealed from a decision, award or order of an administrative law judge.
(b) Oral arguments shall occur on a date and at a time and location specified by the board.
(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(14) Continuation of benefits pending appeal.
(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.
(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.
(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:
   1. The probability of the existence in fact of:
      a. Financial loss;
      b. Privation, suffering, or adversity resulting from insufficient income; or
      c. Detriment to the moving party's property or health if payment of benefits is not instituted; and
   2. There exists a reasonable likelihood that the moving party will prevail on appeal.
(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.
(e) Entitlement to relief by the moving party and responses shall be shown by:
   1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or
   2. Supporting memorandum citing evidence existing within the record and making reference to the place in the record where that evidence is found.

(15) Decisions.
(a) The board shall:
   1. Enter its decision affirming, modifying, or setting aside the order appealed from; or
   2. Remand the claim to an administrative law judge for further proceedings.
(b) Motions for reconsideration shall not be permitted.
(c) The decision of the administrative law judge shall be affirmed if:
   1. A board member is unable to sit on a decision; and
   2. The remaining two (2) board members cannot reach an agreement on a final disposition.
(16) Appeal from board decisions. If applicable, pursuant to KRS 342.290 the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

Section 22. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.850 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 23. Withdrawal of Records. (1) A portion of any original record of the department shall not be withdrawn except upon an order of the commissioner, an administrative law judge, or a member of the board.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final except x-rays filed in coal workers' pneumoconiosis claims which shall be returned to the party who filed the x-ray.
(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.
(c) If an unclaimed exhibit has no money value, it shall be destroyed.
   2. If an unclaimed exhibit has a value of more than $100, it shall be sold as surplus property.
   3. If an unclaimed exhibit has a value of less than $100, it shall be donated to the appropriate state agency.
   4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 24. Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon determination that proceedings have been brought, prosecuted, or defended without reasonable grounds.
(2) A sanction may be assessed against an offending attorney or representative rather than against the party.
(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.
(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 25. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and
(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;
(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or
(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.
(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund or Coal Workers' Pneumoconiosis Fund.
(4) Form UEP-P. Motion for Payment from Uninsured Employers' Fund, provided by the department may be used by the employee.

Section 26. Forms. The Department of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted shall be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form 101, "Application for Resolution of Injury Claim", (revised June, 2000), Department of Workers' Claims;
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cara H. Montgomery

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the procedures to administer the workers' compensation injury claims.
(b) The necessity of this administrative regulation: Workers' compensation injury claims could not be administered without the specific procedures.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the department to promulgate administrative regulations that are necessary to administer claims and KRS Chapter 342.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Workers' compensation injury claims could not be administered without these procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments will do the following: Amend Form 106 which is a medical waiver and consent form to comply with HIPAA requirements found in the federal privacy regulation.
(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to assist medical providers in complying with HIPAA requirements. Even though, the workers compensation process is not subject to HIPAA; medical providers must have reauthorization that medical waivers will comply with the federal privacy regulations.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments set forth procedures to administer claims and provide for prompt and effective administering of workers compensation claims.
(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the prompt and effective administering of workers compensation claims and no delays by concerned medical providers trying to comply with HIPAA.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all parties to a workers compensation claim. Employers, employees, insurers, the Uninsured Employer's Fund, Workers' Compensation Fund, medical providers, and attorneys representing these parties are impacted.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Medical providers will provide medical documents without hesitation, and workers compensation claims will not face a delay.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The department will bear the minimal cost of copying the new Form 106.
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current budget for the Department of Workers' Claims.
(d) Provide an assessment of whether an 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.

(6) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established.

(7) TIERING: Is tiering applied? The amendments apply equally to all parties in a claim.
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(Amended After Hearing)

906 KAR 17:240. Data reporting requirements.

RELATES TO: KRS 304.17A.320, 304.17A-330
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-330
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes [provides that] the commissioner to [may] promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-330 authorizes the commissioner to prescribe the format for reporting the information required by KRS 304.17A-330. This administrative regulation establishes the data elements and the format for submitting annual reports to the Department of Insurance.

Section 1. Definitions. (1) "Association" is defined in KRS 304.17A-005(1).
(2) "Covered person" is defined in KRS 304.17A-500(3).
(3) "Electronic format" means the use of any of the following methods for the submission of the data to the Department of Insurance:
   (a) A three and one-half (3.5) inch diskette; or
   (b) CD-ROMs
   (c) A zip disk in a Microsoft Excel spreadsheet.
(4) [34] "Health benefit plan" means a health benefit plan as defined in KRS 304.17A-005(18) and issued within Kentucky to a Kentucky resident. [Employer-organized association is defined in KRS 304.17A-005(19).]
(5) "Health care provider" is defined in KRS 304.17A-005(23).
(6) "Insurer" is defined in KRS 304.17A-005(23).
(7) "Market segment" means the portion of the market covering one (1) of the following:
   (a) Individual;
   (b) Small group;
   (c) Large group;
   (d) Group association;
   (e) Individual association;
   (f) Self-insured employer organized association; or
   (g) Insurance purchasing outlet.
(8) [41] "Medical service" means the service that was provided by a health care provider to a member of a health benefit plan.
(9) [42] "Member" means a covered person.
(10) [43] "Member month" means a period of time that represents each month that a member or subscriber, depending upon the data request, is enrolled in a health benefit plan.
(11) "Self-insured employer organized association" means an association that holds a certificate of filing pursuant to KRS 304.17A-320.
(12) [44] "Subscriber" means the following:
   (a) In the individual market, the number of [individuals with a]
      health benefit plan policyholders; or
   (b) In the small group, large group, individual association, group
      association, self-insured [an] employer organized association, or
      insurance purchasing outlet [group] market, the number of health
      benefit plan certificate holders.
(13) "Total unduplicated covered persons" means the total number of subscribers and their dependents covered by a health plan at any time during the reporting year.

Section 2. Data Reporting Requirements. (1) Beginning with the report due by July 31, 2004, and within the time frame prescribed by KRS 304.17A-330, an insurer authorized to write health insurance in this state, a self-insured employer organized association, and an insurance purchasing outlet [and each employer organized association that self-insured] shall submit the following reports regarding health benefit plans to the Department of Insurance:
   (a) Annual Report 1 - Insurer Information Report for Premiums and Enrollment.

(b) Annual Report 2 - Premium and Enrollment Report as Member Months;
(c) Annual Report 3 - [Unduplicated Enrollment Report];
(d) Annual Report 4 - Actual Monthly Enrollment Report;
(e) Annual Report 5 - Demographic Report as Member Months;
(f) Annual Report 6 - Demographic Report of Members as of December;
(g) Annual Report 7 - Insurer Information Report for Medical Service Cost;
(j) Annual Report 6 - Medical Service Cost Report by Product Type;
(k) Annual Report 10 - Insurer Information Report for Canceled Policies, and
(2) An entity described in subsection (1) of this section with more than 500 total unduplicated covered persons shall submit all of the reports listed in subsection (1)(a) through (g) of this section.
(3) An entity described in subsection (1) of this section with 500 or less total unduplicated covered persons shall submit only the report listed in subsection (1)(a) of this section.
(4) An insurer, a self-insured employer organized association, or an insurance purchasing outlet [an employer-organized association that self-insurers], who ceases operations in Kentucky shall submit the reports required by subsection (1) of this section to the Department of Insurance within 120 days after cessation.
(5) [43] The reports required pursuant to subsection (1) of this section are contained in the "Data Reporting Manual, HIPMC-DR-1 (06/03)" [1000], which is incorporated by reference in this administrative regulation, and the reports shall:
   (a) Be submitted in an electronic format; and
   (b) Contain the prescribed data elements and information in the order prescribed by the Data Reporting Manual.

Section 3. Incorporated by Reference. (1) "Data Reporting Manual, HIPMC-DR-1 (06/03)" [1000] is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Internet website at http://dpi.prp.ky.gov.

JANIE A. MILLER, Commissioner and Secretary
APPROVED BY AGENCY: July 31, 2003
FILED WITH LRC: August 5, 2003 at 10 a.m.
CONTACT PERSON: William J. Nold or Melea Kelch, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6032, fax (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William J. Nold or Melea Kelch
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the format for the reports required pursuant to KRS 304.17A-330.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17A-330 and to provide insurers, self-insured employer organized associations, and insurance purchasing outlets with guidance concerning the format of required filings.
   (c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.17A-330 authorize the commissioner to prescribe the format for insurers, self-insured employer organized associations, and insurance purchasing outlets to report their insurance experience in Kentucky for the preceding calendar year. KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regula-
tions necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the requirements for the standardized reports to be filed by these entities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the manner and form for reports.

(2) If 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 eliminates or modifies some of the reports required previously by the regulation and incorporates a new edition of the Data Reporting Manual. Additionally, some changes recommended by the industry and other interested parties have been incorporated.

(b) The necessity of the amendment to the administrative regulation: This amendment is necessary to comply with KRS 304.17A-330 and will decrease the number of reports required by the department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment prescribes the format for reports required by KRS 304.17A-300 in the incorporated Data Reporting Manual.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of KRS 304.17A-330 by providing the necessary format and types of reports to be filed to comply with the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all Kentucky health insurers, employer-organized associations that self-insure, and insurance purchasing outlets.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or the change if it is an amendment: All the named entities will be required to use the reports and format as set forth in this regulation. This reporting has been a requirement for several years. The impact should be minimal and beneficial, as the reporting requirements have been simplified.

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

(a) Initially: No cost.

(b) On a continuing basis. There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(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.

(9) TIERING: Is tiering applied? Yes, although this administrative regulation applies to all health insurers, self-insurance employer organized associations, and insurance purchasing outlets doing business in the Commonwealth of Kentucky, entities with less than 500 total unduplicated covered persons shall submit only one report. Whereas, the entities with more than 500 total unduplicated covered persons, shall submit all the required reports.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long Term Care and Disability Services

(Amended after Comments)

VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

907 KAR 1:340. Reimbursement for hospice services.

RELATES TO: 42 U.S.C. 1396a-d

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health 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 the requirements for reimbursements for hospice services.

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

(2) "Home" means:

(a) A [permanent] primary residence which is based on a recipient's county of Medicaid eligibility; or

(b) A nursing facility licensed in accordance with 902 KAR 20:026.

(3) "Hospice provider" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:140; and

(b) Medicare- and Medicaid-certified.

(4) "Hospice recipient" means an individual who:

(a) Is eligible for Medicaid; and

(b) Is certified by a physician as terminally ill with a medical prognosis that life expectancy is six (6) months or less in accordance with 907 KAR 1:330; and

(c) Elects to receive hospice services.

Section 2. Coverage. The department shall reimburse a participating hospice provider for a service rendered to a hospice recipient in accordance with 907 KAR 1:330.

Section 3. Reimbursement Rates for a Covered Hospice Service. (1) The reimbursement rate for a hospice service shall:

(a) Be annually established in accordance with 42 C.F.R. 418.306; and

(b)(1) For routine home care or continuous home care, be based on the geographic location of the hospice recipient's home; and

2. For general inpatient care or inpatient respite care, be based on the geographic location of where the service is provided. [shall be for the following categories of hospice services:

(a) Routine home care;

(b) Continuous home care;

(c) General inpatient care; and

(d) Inpatient respite care.]

(2) If a hospice recipient resides in a nursing facility participating in the Medicaid program and occupies a bed that is Medicaid-certified, the department shall reimburse an amount equal to at least ninety-five (95) percent of the nursing facility's per diem to the hospice provider to cover expenses for room and board provided by the nursing facility.

(3) Reimbursement for bed reservation days shall:

(a) Be made by the department if the hospice recipient is residing in a nursing facility and has been in Medicaid reimbursement status for at least one (1) month;

(b) Be limited to per hospice recipient as follows:

1. To fourteen (14) consecutive days and a total of forty-five (45) days per lifetime for the purpose of inpatient hospitalization; and

2. To eighteen (18) days per lifetime for the purpose of therapeutic home visits;

(c) Not be made after the date of death of a hospice recipient if the hospice recipient dies while in the hospital or on a home visit; and

(d) Be at the rate established in subsection (2) of this section.

(4) Reimbursement for general inpatient and inpatient respite care shall be:

(a) Limited to twenty (20) percent of the aggregate total number of days hospice care is provided to all Medicaid recipients during a twelve (12) month period, beginning November 1 of each year and ending October 31 of the following year in accordance with 42 C.F.R. 418.302(f); and

(b) Subject to recoupment by the department if in excess of paragraph (a) of this subsection.

(e)(6) The hospice cap amount shall be:

(a) $41,600.00 for hospice recipient per year; and

(b) Adjusted for inflation or deflation annually thereafter in accordance with 42 C.F.R. 418.302 and

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Section 4. Limitations on Reimbursement of Covered Hospice Services. (1) A routine home care service unit shall be a day during which a hospice recipient receives routine home care.
(2) Continuous home care shall be:
(a) Reimbursed at an hourly rate which shall be calculated by dividing the rate established pursuant to Section 3(1) of this administrative regulation by twenty-four (24);
(b) Provided a minimum of eight (8) hours per day;
(c) Reimbursed per unit which shall equal one (1) hour; and
(d) Predominately nursing care provided by a registered nurse or a licensed practical nurse.
(3) General inpatient care shall be equal to twenty four (24) hours per (1) unit;
(4) Inpatient respite care shall:
(a) Be limited to five (5) consecutive days; and
(b) Not be provided to a hospice recipient who is residing in a nursing facility.
(5) Except for the day on which a hospice recipient is discharged, the inpatient rate, either general or respite, shall be paid for the day of admission and for all subsequent inpatient days.
(6) On the day a hospice recipient is discharged from inpatient care, either general or respite, a hospice provider shall be reimbursed:
(a) Depending on the care needs of the hospice recipient, either the routine home care rate or the continuous home care rate; or
(b) The inpatient rate, either general or respite, if the hospice recipient is discharged deceased.

Section 5. Copayments. (1) The department shall pay a hospice recipient’s Medicare copayment if the individual qualifies for and has elected to receive Medicaid hospice benefits as established in 907 KAR 1:330.
(2) A copayment shall not be applied to a Medicaid reimbursement rate for a hospice service.

Section 6. Coverage of Drugs. (1) A reimbursement rate established in Section 3(1) of this administrative regulation shall include reimbursement for any drug related to the terminal illness of a hospice recipient.
(2) If a drug is not related to the terminal illness of a hospice recipient:
(a) A hospice provider shall complete and submit two (2) copies of the MAP 384 form and one (1) copy of the MAP 374 form to the department; and
(b) The department shall:
1. Return one (1) copy of the MAP 384 form to the hospice provider which shall indicate the maximum amount allowable for reimbursement, as determined in accordance with 907 KAR 1:018; and
2. Reimburse the hospice provider the lesser of 100 percent of the cost of the drug or the maximum amount allowable, as determined in accordance with 907 KAR 1:018.

Section 7. Appeal Rights. A hospice provider may appeal a department decision as to the application of this administrative regulation by filing an appeal with the commissioner in accordance with 907 KAR 1:971[-Sections 8 and 9].

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “MAP 374, Election of Medicaid Hospice Benefit Form, September 2002 [April 2004 Edition];” and
(b) “MAP 384, Hospice Drug Form, September 1992 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, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: August 8, 2003
FILED WITH LRC: August 14, 2003 at noon

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen or Teresa Goodrich (564-8204)
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for hospice services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement methodology for hospice services.
(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 reimbursement methodology for hospice services.
(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 the reimbursement methodology for hospice 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 administrative regulation is being amended to delete the overall cap on total reimbursement, per recipient, per year, and to clarify reimbursement guidelines for hospice services.
(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to eliminate the aggregate cap, per recipient, per year and to clarify reimbursement guidelines for hospice services.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the authorizing statutes by deleting the overall cap on total reimbursement and by clarifying reimbursement guidelines for hospice services.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this regulation will assist in the effective administration of the statutes by deleting the capped aggregate amount, per recipient, per year and by clarifying reimbursement guidelines for hospice services.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The participants in this administrative regulation will be affected by the amendment to the administrative regulation. The IRS is 29 hospice providers enrolled in the hospice program.
(4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: As a result of the amendments to this administrative regulation, providers will not have a capped aggregate amount, per recipient, per year.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS anticipates no fiscal impact as a result of this administrative regulation.
(b) On a continuing basis: DMS anticipates no fiscal impact as a result of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administration regulation: Federal funds authorized under Title XIX of the Social Security Act and state matching funds shall be used to implement the amendment to 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 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 increases 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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.
EXECUTIVE BRANCH ETHICS COMMISSION
(AMENDMENT)

9 KAR 1:040. Registration and expenditure statements; financial transactions and termination forms; handbook; and enforcement.


STATUTORY AUTHORITY: KRS 11A.110(3), (4), 11A.241(5).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.241(4)

requires the Executive Branch Ethics Commission to prescribe the initial registration statement and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. KRS 11A.241(6) requires the commission to publish a handbook that explains the provisions of KRS 11A.201 to 11A.246. KRS 11A.990 states that a lobbyist who fails to file a registration statement shall be subject to a civil penalty. This administrative regulation establishes the registration, financial transactions, and expenditure statements, termination notice, handbook, and enforcement procedures.

Section 1. Initial Registration Statement. (1) The initial registration statement required by KRS 11A.211 shall be filed on the "Initial Registration Statement" form.
(2) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist:
1. Has been engaged; or
2. Is responsible.
(b) Subject matters shall include:
1. An award of grant for social services;
2. A lease for office space or equipment;
3. A contract to provide food, clothing, or other consumable products; and
4. Any other subject matter.
(3) The signature on the "Initial Registration Statement" which is filed with the commission shall be an original signature in ink other than black.
(b) The forms incorporated by reference in this administrative regulation may be reproduced by an executive agency lobbyist or his employer.

Section 2. (1) The "Updated Registration Statement" form required by KRS 11A.211(2) shall be filed on the applicable "Updated Registration Statement" form.
(2) The notice of termination required by KRS 11A.211(4) shall be filed on the "Termination Notification As Executive Agency Lobbyist" form.

Section 3. Enforcement Procedure. (1) If an executive agency lobbyist, an employer of an executive agency lobbyist, or a real party in interest has not filed an "Updated Registration Statement" on or before the date the statement is due, the commission shall notify the party, certified mail, return receipt requested, that if the statement is not filed within fifteen (15) days of the date of the receipt of notice the commission shall levy a fine, as provided by KRS 11A.990(5).
(2) If, by the 10th day after proof of service of the certified letter is received by the commission, the commission has not received the statement that was due by July 31, the commission shall prepare and issue to the executive agency lobbyist, employer or real party in interest an order demanding payment of the appropriate fine as required by KRS 11A.990(5). The executive agency lobbyist, employer or real party in interest shall pay the fine no later than ten (10) days from the date of the order. The commission may enjoin or reduce the fine for non-compliance if the commission receives evidence during the ten (10) day fine payment period indicating the filer has already filed the updated registration statement, or that the delinquency is in error.
(3) The commission also may enjoin or reduce a fine for late filing of the updated registration statement if the commission feels such exoneration, based on the circumstances, is warranted.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Executive Agency Lobbyist/Employer or Real Party in Interest Initial Registration Statement (Rev. 08/03 [4140]);
(b) "Updated Registration Statement - Executive Agency Lobbyist (Rev. 11/00);
(c) "Updated Registration Statement - Employer of Executive Agency Lobbyist (Rev. 11/00);
(d) "Updated Registration Statement - Real Party in Interest (Rev. 11/00);
(e) "Termination Notification as Executive Agency Lobbyist (Rev. 11/00);
(f) "Executive Agency Lobbying Handbook (Rev. 11/00);" and
(g) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist (9/93).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, Room 259 (224), Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOSEPH B. HELM, JR., Chairman
APPROVED BY AGENCY: August 11, 2003
FILED WITH LRC: August 14, 2003 at 9 a.m.
PUBLIC HEARING AND "PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2003 at 10 a.m. at 258 Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in hearing at this hearing shall notify this agency in writing by September 22, 2003 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.
(3) 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 October 1, 2003. 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: Andy Crocker, General Counsel, Executive Branch Ethics Commission, 258 Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky 40601, (502) 564-7954, fax (502) 564-2686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Andy Crocker, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation currently sets forth procedures for filing various statements required of executive agency lobbyists, employers and real parties in interest.
(b) The necessity of this administrative regulation: This administrative regulation currently sets forth the forms and procedures to be used in filing executive agency lobbying statements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 11A.211 requires registration statements to be filed, KRS 11A.990 mandates penalties for failure to file such statements, and this administrative regulation currently sets forth the method of filing, but does not completely address the necessary enforcement procedures for late filing or failure to file such
programs of student financial assistance. [The authority is empowered by] KRS 164.746(6) and (13) requires the authority to enter contracts with eligible educational institutions to provide for the administration of student financial assistance programs, and to approve, disapprove, limit, suspend, or terminate the participation of such institutions. This administrative regulation establishes the conditions under which the authority shall [will] execute a contract with an educational institution for participation in any or all of the authority's programs. [The amendment eliminates standards and documentation of financial responsibility and administrative capability that are redundant of federal requirements, and thereby eliminates the separate determination by the authority of a school's compliance in lieu of the determination by the secretary.]

Section 1. Definitions. (1) The definition of "authority" is governed by KRS 164.740.
(2) The definition of "business school" is governed by KRS 164.740.
(3) The definition of "college" is governed by KRS 164.740.
(4) The definition of "eligible program of study" is governed by KRS 164.769(2)(b) for purposes of Section 8 of this administrative regulation, and is governed by 11 KAR 5:001, Section 1(9), for purposes of Sections 6 and 9 of this administrative regulation.
(5) The definition of "federal act" is governed by KRS 164.740.
(8) "Fiscal year default rate" means, for any fiscal year in which thirty (30) or more current and former students at the institution entered repayment on federal Stafford loans or federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage, determined by the secretary, of those current and former students who entered repayment on such loans who default before the end of the following fiscal year. "Fiscal year default rate" means for any fiscal year in which less than thirty (30) of the institution's current and former students entered repayment on federal Stafford loans or federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on federal Stafford loans or federal SLS loans in any of the three (3) most recent fiscal years, who default before the end of the fiscal year immediately following the year in which they entered repayment.
(7) "Fiscal year" means the period from and including October 1 of the calendar year through and including September 30 of the following calendar year.
(8) "Federal Stafford loans or federal SLS loans" means loans reinsured by the secretary pursuant to sections 428 or 429A of the federal act (20 U.S.C. 1078 or 1078-1).
(9) The definition of "insured student loan" is governed by KRS 164.740.
(10) The definition of "school of nursing" is governed by KRS 164.740.
(11) The definition of "secretary" is governed by KRS 164.740.
(12) The definition of "vocational school" is governed by KRS 164.740.

Section 2. General Rule. "The authority shall execute an administrative agreement with any educational institution which meets the eligibility criteria established by KRS 164.740 et seq., KRS 164.780 et seq., and (as applicable to a particular authority program) the federal act, and which is approved for participation by the authority and (as applicable) the secretary. The authority shall approve for participation in any authority program an educational institution which:
(1) is certified by the secretary to participate in programs of student financial assistance authorized by the federal act, and has in force, if required by the secretary, a participation agreement with the secretary to participate in any of those programs;
(2) is not presently suspended or terminated from participation in student financial assistance programs by either the authority, and organization authorized to insure loans under the federal act, or the secretary;
(3) Meets the criteria set forth in Sections 4 through 10 of this administrative regulation, as applicable to the particular authority.
program(s) in which the educational institution seeks participation; and
(4) Has been in continuous operation for at least two (2) years, unless otherwise required by the federal act.

Section 3. Maintenance of Participation. An administrative agreement executed pursuant to Section 2 of this administrative regulation shall remain in force, subject to 11 KAR 4:020, in accordance with its terms, for so long as the educational institution conforms to the criteria set forth in Section 2 of this administrative regulation, except that the agreement may, at the discretion of the authority, remain in force for one or more programs, as circumstances warrant, notwithstanding Section 2(2) of this administrative regulation. The authority may periodically reevaluate the status of an institution with respect to the criteria established in this administrative regulation.

Section 4. Documentation of Federal Eligibility. (1) The institution shall demonstrate to the authority that it is approved by the secretary to participate, and holds all necessary licenses to offer academic programs by submitting to the authority a true and complete copy of the most recent federal application for institutional eligibility, eligibility letter, and program participation agreement executed by the secretary.
(2) The authority may disapprove, limit, suspend, or terminate the participation of an institution upon failure to submit the required documentation within forty-five (45) days following request by the authority.

Section 5. Insured Student Loan Program Participation. In order to participate in the authority’s insured student loan program, the educational institution shall:
(1) Be certified by the secretary to participate and have in force, if required by the secretary, a participation agreement with the secretary; and
(2) Execute an administrative agreement with the authority, provided that the authority may permit an educational institution, otherwise approved, to participate without an agreement if the institution’s fiscal year default rate is twenty (20) percent or less or the volume of loans insured by the authority for students attending that institution in any fiscal year does not exceed $50,000.

Section 6. Kentucky Tuition Grant Program Participation. In order to participate in the authority’s KTG program, an educational institution shall:
(1) Qualify as a private, independent college or university, which is accredited by a regional accrediting association recognized by the U.S. Department of Education (nonprofit "college");
(2) Be located within the Commonwealth of Kentucky;
(3) Offer an “eligible program of study,” as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 7. KHEAA Work Study Program Participation. In order to participate in the authority’s KHEAA work study program, an educational institution shall:
(1) Qualify as a "business school," "college," "school of nursing," or "vocational school";
(2) Be located within the Commonwealth of Kentucky;
(3) Offer a program of study not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 8. Teacher Scholarship Participation. In order to participate in the authority’s teacher scholarship program, an educational institution shall:
(1) Qualify as a "business school," "college," "school of nursing," or "vocational school";
(2) Be located within the Commonwealth of Kentucky; and
(3) Offer an "eligible program of study;" and
(4) Execute an administrative agreement with the authority.

Section 9. College Access Program Participation. In order to participate in the authority’s college access program, an educational institution shall:
(1) Qualify as a "business school," "college," "school of nursing," or "vocational school;" and
(2) Be located within the Commonwealth of Kentucky; and
(3) Offer an "eligible program of study;" and
(4) Execute an administrative agreement with the authority.

Section 10. The authority may execute an administrative agreement with an educational institution which may include nonmain campuses of the institution that are not separately incorporated.

MARcia CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, 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. Any person who wishes to be heard will be given an opportunity to request a transcript of the public hearing. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40620-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the conditions under which the authority shall execute a contract with an educational institution for participation in the authority’s programs.
(b) The necessity of this administrative regulation: KRS 164.785(6) and (13) require the authority to enter contracts with eligible educational institutions to provide for the administration of student financial assistance programs, and approve, disapprove, limit, suspend, or terminate the participation of such institutions.
(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 conditions under which the authority shall execute a contract with an educational institution for participation in the authority’s programs.
(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 conforming to KRS 164.785.
(2) If 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 change the existing regulation by deleting the restriction to “nonprofit college” and replacing it with “independent college or university, which is accredited by a regional accrediting association recognized by the United States Department of Education.”
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to remove the limitation that only “nonprofit” institutions could participate in the Kentucky Tuition Grant Program. KRS 164.785 has not contained this limitation since the statute was amended in 1998.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by removing the limitation that only “nonprofit” institutions could participate in the Kentucky Tuition Grant Program.
(d) How the amendment will assist in the effective administration
of the statutes: The amendment will assist in the effective admin-
istrative regulation by removing the limitation that only "nonprofit"
institutions could participate in the Kentucky Tuition Grant Program.
That statutory change superseded the limitation that has remained
unchanged in the administrative regulation.

(3) List the type and number of individuals, businesses, organi-
cations, or state and local governments affected by this administra-
tive regulation: For Academic Year 2002-2003, 24 institutions par-
ticipated in the Kentucky Tuition Grant Program. One of those insti-
tutions is a for-profit educational institution.

(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: The one
for-profit educational institution will not be affected because it has
been allowed to participate since the statute was amended in 1998.

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

(a) Initially: None
(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Fund-
ing for CAP and KAN is provided through net lottery proceeds ap-
propriated by the General Assembly.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No. This admin-
istrative regulation does not directly or indirectly increase any fees.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This ad-
ministrative regulation does not establish any fees, nor does this
administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied. It
is not applicable to this amendment. This administrative regulation
is intended to provide equal opportunity to participate, and conse-
quently 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. Con-
stitution may be implicated as well as Sections 2 and 3 of the Kentucky
Constitution. The regulation provides equal treatment and opportu-
nity for all participants and recipients.

KENTUCKY REVENUE CABINET
Department of Tax Administration
Division of Compliance and Taxpayer Assistance
(Amendment)

103 KAR 18:050. Withholding statements[; Form K-2].

RELATES TO: KRS 141.330, 141.335
STATUTORY AUTHORITY: KRS 131.130, 141.335
NECESSITY, FUNCTION, AND CONFORMITY: This adminis-
trative regulation is necessary to provide guidance to employers in
preparing and submitting the withholding statements to comply with
KRS 141.335. KRS 141.335(2) requires the cabinet to establish the
form and required contents of the withholding statement to be filed
pursuant to KRS 141.225(1). KRS 141.335 this administrative regula-
tion specifies the information that is required on employer income tax withholding statements.

Section 1. Acceptable Forms. The cabinet shall accept the fol-
lowing forms as withholding statements:
(1) Revenue Form K-2, "Withholding Statement";
(2) Federal Form W-2, "Wage and Tax Statement"; or
(3) Commercially-printed forms that conform to the federal
specifications.

Section 2. General. Employers shall furnish to each employee,
by January 31 following the close of the calendar year, the design-
ated copies of the withholding statement[; Revenue Form K-2 (the
data portion of the combined federal and state withholding state-
ments are also acceptable)] 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. (24) Contents. (1) The withholding statement [Re-
venue Form K-2 (or the state portion of the combined withholding
statement)] shall contain the following information:
(a) Employer's and employee's name and address;
(b) Employer's Kentucky [Employer] withholding account num-
ber;
(c) Employee's social security number;
(d) Total wages paid to employee;
(e) Federal income tax withheld; and
(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 reissu-
ance.

(b) Commercially-printed forms shall:
1. Contain a designated space for state name, employer's Ken-
tucky withholding account number, state wages, and [for] state tax
withheld; and
2. Conform to the federal specification, be legible and conform
substantially in content and as to the official form.

(3) An employer shall submit commercially printed substitute
forms to the cabinet for initial approval before they may be used.

Section 4. (3) Interrupted and Terminated Employment. (1)(a) If
employment ends before the close of the calendar year, the em-
ployer may furnish copies to the employee at any time after em-
ployment ends, but no later than January 31 of the following year.

(2) If an employee asks for the withholding statement, copies
shall be provided to the employee within thirty (30) days of the re-
quest or within thirty (30) days of the final payment, whichever
is later.

(3) (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.

(b) The employer shall submit its final return and withholding
statements to the cabinet within the same thirty (30) day period.
Designated copies of the withholding statement shall be furnished
to the employee within thirty (30) days from the last payment of wages.

(4) The furnishing of a statement may be deferred:
1. If employment is interrupted; and
2. If there is a reasonable expectation on the part of employer
and employees of further employment during the calendar year.

(5) The statement may be deferred to the date it is determined
that further employment during the calendar year will not occur.

Section 5. (4) Incorrect and Duplicate Withholding Statements.
(1) If it is necessary to correct a withholding statement [Revenue
Form K-2] after it has been issued to an employee, the new with-
holding statement shall be clearly marked "Corrected by Employer",
and a copy submitted to the cabinet within thirty (30) days of issu-
ance. [;]

(2) If the withholding statement is lost or destroyed, within thirty
(30) days of the request by the employee, the employer shall pre-
pare and issue duplicate copies to the employee that are clearly
marked "Duplicate."

Section 6. (5) Cabinet Copy. (1) Designated copies of with-
holding statements issued shall be submitted to the cabinet by each
employer with Revenue Form 42AB06, Transmitter Report for Filing
Kentucky Wage Statement [K-3 and K-3E].

(b) An employer who issues 100 or more withholding statements
within 265 Forms K-2 annually shall utilize an acceptable form of
magnetic media filing.

(2) An employer who issues less than 100 withholding state-
ments [250 Forms K-2] may utilize magnetic media filing.

(4) (a) The cabinet shall provide to employers by October 31 of
each year information about the types of magnetic media that shall
be acceptable to the cabinet.

(b) Acceptable magnetic media shall include all of the accept-
able methods utilized by the Social Security Administration and the
Internal Revenue Service that can be supported by the cabinet's
equipment.

(5) If an employer is required to utilize magnetic media filing, it shall file the withholding statements on magnetic media unless the cabinet grants a written waiver of the requirement.

Section 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 when required to file on magnetic media; or
(e) Fails to provide timely or correct payee statement to employees.

Section 8. [6.] Extension. Upon written application to the cabinet, the cabinet [Income Tax Division] shall be authorized to grant employers an extension of time, not in excess of thirty (30) days, in which to furnish employees with the designated copy of withholding statements.

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) These forms may be inspected, copied, or obtained at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

DANA BYNUM MAYTON, Secretary
APPROVED BY AGENCY: August 13, 2003
FILED WITH LRC: August 14, 2003 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 30, 2003 at 9 a.m. at 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 23, 2003, 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 October 1, 2003. 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: Edward A. Mattingly, Tax Consultant, Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-6843, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward A. Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance to employers in order that they may comply with the provisions of KRS 141.335.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to distinguish between those employers that are required to file using a magnetic media from those employers that may file in that manner.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to KRS 141.335 by establishing the other times when the withholding statement shall be furnished, the contents of information on the withholding statement, and the acceptable forms and filing methods.

(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 providing guidance to employers who are required to comply with KRS 141.335.

(2) If 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 existing administrative regulation changes the threshold for employers who are required to submit withholding statements using an acceptable form of magnetic media filing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the administrative burden of processing paper documents.

(c) How the amendment conforms to the content of the authorizing statute: The amendment conforms to KRS 131.130 by allowing the cabinet to administer the withholding tax in the most efficient manner.

(d) How the amendment will assist in the effective administration of the statutes: Without the burden of capturing data from paper documents, staff will be available to assist additional taxpayers with questions, insure compliance by all taxpayers with the applicable statutes, and more easily provide data related to taxation of individuals employed within Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 120,000 employers are impacted by this administrative regulation. Only the largest employers within Kentucky will be required to utilize an acceptable form of magnetic media filing. All other employers may utilize the magnetic media methods.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The largest employers will be impacted only slightly. Most of these employers already have the withholding statement information in an electronic form. The only change will be the delivery to the cabinet.

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

(a) Initially: None

(b) On a continuing basis: None

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding sources will be required.

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

(9) TIERING: Is tiering applied? Yes. Tiering has been applied based upon the number of withholding statements to be filed by the employer.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. The local government is required to submit withholding statements for each individual employed during the calendar year. If the local government has 100 or more withholding statements to submit to the cabinet, it will be required to submit those withholding statements by magnetic media.

2. State what unit, part, or division of local government to which this administrative regulation will affect. All units, parts, and divisions or local government are required to submit withholding statements for each employee.

3. State the aspect or service of local government to which this
administered regulation relates. This administrative regulation relates to local government as an employer of individuals.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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.

Revenues (+/-): Revenues will not be impacted.

Expenditures (+/-): Additional expenditures will be negligible because there are various methods for filing magnetic media.

Other Explanation: None

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:015. Legal documents.

RELATES TO: KRS Chapters 42, 45, 56, 57
STATUTORY AUTHORITY: 45A 035 [Chapter 45]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A 035 authorizes the secretary of the Finance and Administration Cabinet to promulgate administrative regulations that promulgate administrative regulations

VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

FILED WITH LRC: August 7, 2003 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m., Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates a policy that permits the Finance and Administration Cabinet to prescribe standard legal forms and provides the cabinet with the authority to approve legal documents when no standard form exists.

(b) The necessity of this administrative regulation: This administrative regulation ensures uniformity among state agencies using legal documents in transactions over which the Finance and Administration Cabinet, by law, exercises administrative supervision or jurisdiction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In accordance with KRS 45A 035, the secretary of the Finance and Administration Cabinet may adopt regulations governing the purchasing, management, and control of any and all supplies, services, and construction, and other items required to be purchased by the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment clarifies the role and responsibilities of the Finance and Administration Cabinet.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will not substantively change the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to correct typographical errors and to bring it into compliance with the drafting requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state agencies that contract for goods and services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation if new, or by the change if it is an amendment: The amendment will have little or no impact on the current practices of state agencies.

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

(a) Initially: $0

(b) On a continuing basis: $0

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No
(7) Provide an assessment of whether an 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

(9) TIERING: Is tiering applied? No, the administrative regulation applies equally to all state agencies because there is potential risk to the Commonwealth when an agency enters into a legal document that is not in the best interest of the Commonwealth regardless of the size or other factors that could be used to stratify state agencies.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures. The amendment to this administrative regulation adds the Finance and Administration Cabinet's website as a source for accessing the Finance and Administration Cabinet Manual of Policies and Procedures. The amendment revises policies in the manual to permit online solicitation responses, adds capital construction project closeout procedures, and corrects typographical errors.

Section 1. Incorporation by Reference. (1) "Finance and Administration Cabinet Manual of Policies and Procedures (Revised 7/18/03 [444149])" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Finance and Administration Cabinet's website, or at the Finance and Administration Cabinet, Office of Management and Budget, Room 388A, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative rule to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6680, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the Finance and Administration Cabinet Manual of Policies and Procedures.

(b) The necessity of this administrative regulation: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.045 to promulgate administrative regulations governing purchases by state agencies and to publish a manual of policies and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the policies and procedures for awarding contracts and selling to the Commonwealth, and it informs state agencies of procurement and accounting 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 proposed amendment will update the policies and procedures that support the Management and Administrative Reporting System (MARS), inform those governed by it that the manual may be accessed from the Finance and Administration Cabinet's website, and add construction project closeout procedures.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to update policies and procedures to provide guidance for users of the MARS system and parties regulated by the Finance and Administration Cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies, and all individuals, firms, organizations, and political subdivisions doing business with the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact. The amended policies and procedures merely support process changes in MARS.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(9) TIERING: Is tiering applied? Yes, several policies differentiate among state agencies based on small purchase limits.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:076. Small and small minority business set asides.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.665, 45A.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.670 authorizes [provides for] the Finance and Administration Cabinet to
promulgate administrative regulations defining standards regarding the classifications and definitions for small and small minority business as they relate to KRS 45A.665 to 45A.685. This amendment brings the administrative regulation into compliance with 13 C.F.R. 121 and KRS Chapter 13A. [This administrative regulation also replaces and repeals 200 KAR 5:075 pertaining to small and small minority business set asides.]

Section 1. Definitions. (1) "Small business" means [for purposes of purchasing commodities and services, except construction services, i.e. a business, including its affiliates, which:
(a) is independently owned and operated;
(b) is not dominant in the field of operation in which it is bidding and
(c) Meets the size standards of 13 C.F.R. 121.201 (for state contracts and employee not more than 100 employees).
(2) "Small business" for the purposes of purchasing contractual services for capital construction projects, is a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on state contracts and shall further qualify under the following criteria:
(a) Single or limited trade projects: the bidding firm shall not employ more than fifteen (15) full-time employees and shall not have gross receipts for the past year of more than $200,000.
(b) Multitude projects: the bidding firm shall not employ more than thirty (30) full-time employees and shall not have gross receipts for the past year of more than $600,000.
(2) [69] "Small minority business" means [for purposes of purchasing commodities and services, and contractual services for capital projects shall be] a business, which, in addition to meeting the definition of [established for] a small business under subsection (1) of this section [this administrative regulation for the respective area of purchasing activity], is owned and operated by fifty-one (51) percent or more females or persons of African American, Hispanic, Asian, Pacific Islander, American Indian or Alaskan native heritage.

Section 2. Capital Construction Projects. Highly technical and single source projects shall be [are] exempt from the small business and small minority business set aside designation [regardless of cost]. Single or limited trade projects estimated to cost $10,000 or less, and multitrade projects estimated to cost $25,000 or less, may [shall be eligible to] be designated as small business and small minority business set aside [provided the bidder meets the criteria established in Section 1 of the administrative regulation].

Section 3. Certification. A [The] bidder submitting a bid in response to a solicitation [an invitation] designated as a small business or small minority business set aside shall certify as a part of the [his] bid, to the purchasing agency, that the bidding [his] firm is a small business or small minority business as defined in Section 1 of meeting all of the criteria established under this administrative regulation. The bidder shall supply any information requested by the purchasing agency for the purpose of verifying the bidder's eligibility for the set aside designation.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 11 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing must notify the agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates standards for small and small minority business set asides in contracts issued by the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation promulgates standards for complying with KRS 45A.665 to 45A.685 and 13 C.F.R. 121.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates standards to meet the requirements of KRS 45A.665 to 45A.685.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation promulgates definitions and standards by which small and small minority business will qualify for procurement set asides when doing business with the Commonwealth of 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: The amendment promulgates compliance with KRS Chapter 13A and adds the federal requirements of 13 C.F.R. 121.
(b) The necessity of the amendment to this administrative regulation: The amendment promulgates compliance with KRS Chapter 13A and 13 C.F.R. 121.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment does not change conformity to the authorizing statutes.
(d) How the amendment will assist in the effective administration of the statute: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: State agencies, small businesses and small minority businesses are affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase of 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

TIERING: Is tiering applied? Yes, tiering applies. The administrative regulation applies to the defined business classification.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035, 45A.045(3), (5), 45A.100(3), 45A.060(3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is required by KRS 45A.035 requires [where the
Secretary of the Finance and Administration Cabinet to promulgate administrative regulations relating to conditions and procedures for delegations of purchasing authority. This administrative regulation provides [delegations authority to any agency (it will provide)] uniformly for all delegations of authority by the Finance and Administration Cabinet and helps [help] to ensure the competency of the agency receiving the delegated authority in [suit] the proposed delegated area of purchasing. [The administrative regulation will also help to ensure that the agency receiving the authority is following all requirements of KRS Chapter 45A.] In addition, this administrative regulation sets [sets] out the requirements for the Secretary of the Finance and Administration Cabinet to waive the small purchase authority limitations pursuant to KRS 45A.100. The amendment to this administrative regulation corrects clerical or typographical errors; changes reference to the Division of Purchases to the Division of Material and Procurement Services, based on the reorganization of the Finance and Administration Cabinet; and authorizes the Division of Administrative Policy and Audit to perform periodic procurement audits of agencies holding delegated small purchase authority exceeding the agency's statutory limit. [will set out the method by which the Secretary of the Finance and Administration Cabinet may delegate authority to declare and dispose of surplus personal property and the information required to be submitted by an agency requesting delegation of such authority.] 

Section 1. Delegation [Delegations] of Purchasing Authority Other Than for Small Purchases. (1) A secretary's order may delegate Finance and Administration Cabinet purchasing authority pursuant to KRS 45A.045(3). (2) A government agency requesting a delegation from the Finance and Administration Cabinet under KRS 45A.045(3) shall submit [the following] to the secretary: (a) A statement that the agency will comply with all applicable laws, administrative regulations, and Finance and Administration Cabinet policies and procedures. (b) Proof of competency in the proposed delegated area, demonstrated by staff experience and training and the resources available to the agency to perform the purchase delegation. (2) The secretary's order shall specify the authority the agency shall receive, the purpose for which the delegation is given, and the period of time for which the delegation is valid. (3) An agency receiving [such] delegation shall comply with the provisions of KRS Chapter 45A and all other purchasing statutes, administrative regulations, policies and procedures of the Finance and Administration Cabinet. (4) An agency holding [each agency receiving] a delegation shall certify annually to the secretary by July 1, that it is in compliance with all purchasing laws, administrative regulations and policies. This certification shall be filed with the secretary on or before January 1, 1997 and thereafter on July 1 of each year. (5) A delegation [standing delegations] of purchasing authority by the secretary shall remain in force according to the original terms [thereof] unless modified, or until rescinded by the secretary. (6) A delegation [Delegations] of purchasing authority for an agency's individual requirements, or to authorize procurement activities by an agency for pre-established and limited periods of time may be granted [as appropriate with regard to the procurement activity or function] by the Commissioner of the Department [Commissioner of the Department] for Administration or the Commissioner for the Department for [and] Facilities Management, or their designee as appropriate, setting forth the [with particularity the kind and type of procurement activity or function [authorized by the delegation] and fixing the limits and restrictions on the exercise of the delegation and its duration. No [such] delegation granted under this section [of purchasing authority] shall be extended or renewed except with the approval of the Secretary of the Finance and Administration Cabinet. 

Section 2. Small Purchase Authority Delegation Exceeding an Agency's Statutory Small Purchase Limit Under KRS 45A.100. (1) The Secretary of the Finance and Administration Cabinet may delegate purchasing authority that exceeds the agency's small purchase limit set out in KRS 45A.100 by secretary's order. The order (These standing delegations) shall set forth the [with particularity the kind or type of procurement activity or function delegated and [together with any limitations or restrictions on the exercise of the [such] authority. (2) An agency request for small purchase delegation above the limits established in KRS 45A.100 shall be submitted to the secretary, approved by the head of the agency [head] submitting the request, and shall contain [supply] the following information: (a) The [The] total dollars spent; each of the two (2) preceding fiscal years under the agency's existing small purchase authority; and (b) The number of small purchase transactions represented by those dollar figures for each fiscal year. (c) A description of the agency's organizational structure, which shall [must] demonstrate that the delegation [placement of the procurement function] is appropriate to the agency's size and procurement needs. (d) A description of the agency's internal controls, which shall ensure adequate safeguarding of assets and the [segregation and separation of [duties, particularly the separation of] purchasing, accounting, and receiving functions. (e) Documentation that the agency has prepared and implemented a plan to identify and utilize small and minority business [owned] suppliers and [for small purchases], the agency's future goals in this respect; (f) [shall be reported] with a goal of five (5) percent utilization being the minimum; An action plan showing how the agency plans to reach its goals; (g) Acknowledgment that [shall be included]. The agency shall be prepared to report its progress toward meeting that goal upon the secretary's request. (h) The agency [acknowledge that it] is aware of, and in compliance with, the provisions of KRS 45A.500 and 200 KAR 5:330 relating to recycled material content products; (i) [shall be to the satisfaction of the Secretary of the Finance and Administration Cabinet. (j) A list of the agency's procurement personnel, below the level of branch manager, to whom the agency will give authority for purchases at the requested higher small purchase limits and their [professional] purchasing certification or training. (3) An agency shall set a minimum goal of five (5) percent utilization of small business and small minority business suppliers. (4) An agency shall report its progress toward meeting its utilization goal upon the secretary's request. (5) Procurement personnel of an agency granted delegated purchasing authority shall, within one (1) year after the granting of the delegation or within one (1) year of employment in government in a procurement position, whichever is sooner, have completed a course in purchasing offered by the Finance and Administration Cabinet's Division of Material and Procurement Services and Division of Contracting and Administration, or the introductory course in purchasing offered by the National Institute of Governmental Purchasing, or an equivalent course offered by the National Association of Purchasing Management. (6) An agency requesting delegated purchasing authority [Such persons shall, within one (1) year after the granting of the delegation or within one (1) year of employment in government in a procurement position, whichever is sooner, have completed a course in purchasing offered by the Finance and Administration Cabinet's Division of Purchases and Division of Contracting and Administration, or the introductory course in purchasing offered by the National Institute of Governmental Purchasing, or an equivalent course offered by the National Association of Purchasing Management. (7) The requesting agency] shall utilize each on-line function of the state's procurement system [Kentucky Automated Purchasing System] that has been offered to the agency by the Division of
(7) The Division of Material and Procurement Services and the Division of the Purchasing and Contracting Administration may [perform] or request [the performance of] periodic procurement audits by the Division of Administrative Policy and Audit of the agencies to which small purchase delegation above the limits established in KRS 45A.100 has been granted. Such audits shall investigate an agency’s compliance with the provisions of KRS Chapter 45A, purchasing administrative regulations and the Finance and Administration Cabinet Manual of Policies and Procedures. If an agency demonstrates deficiencies in procurement expertise or practices, the division (division) shall recommend that the secretary revoke or amend any delegations granted under this administrative regulation. Authority shall not be extended or renewed except with the approval of the secretary.

Section 3. Delegation of Authority to Declare and Dispose of Surplus Personal Property. (1) A secretary’s order may delegate Finance and Administration Cabinet authority pursuant to KRS 45A.045(5).

(2) A [4] a[ ] request for delegation shall only be granted to the agency head.

(3) An [2] a[ ] government agency head requesting [a] delegation of authority to declare and dispose of surplus personal property from the Finance and Administration Cabinet under KRS 45A.045(5) shall submit a request to the Secretary of the [4] Finance and Administration Cabinet.

(4) [3] a[ ] The request shall assure that:
(a) Only property surplus to the agency’s need shall be declared surplus and disposed of;
(b) No employee of the Commonwealth [state] shall personally benefit from the disposal of surplus property; and
(c) Disposal shall be in accordance with applicable federal and state laws and regulations, including the executive branch code of ethics[1] and Finance and Administration Cabinet manual of policies and procedures.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6600, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures for the delegation of purchasing authority from the Finance and Administration Cabinet to other state agencies.
(b) The necessity of this administrative regulation: The administrative regulation complies with the requirements of KRS 45A.035(2)(a) and 45A.045(5) that the Finance and Administration Cabinet promulgates regulations covering the conditions and procedures for delegation of purchasing authority.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation promulgates conditions and procedures for the delegation of purchasing authority to other state agencies.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides uniformity for all delegations of authority by the Finance and Administration Cabinet and helps to ensure the competency of the agency receiving the delegated authority in the proposed delegated area of purchasing. In addition, this administrative regulation sets out the requirements for the secretary of the Finance and Administration Cabinet to waive the small purchase authority limitations pursuant to KRS 45A.100.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment to this administrative regulation for periodically auditing of agencies with delegated purchasing authority by the Finance and Administration Cabinet’s Division of Administrative Policy and Audit. Also, procurement personnel must complete the designated procurement training within one year of delegation or of employment.
(b) The necessity of the amendment to this administrative regulation: The administrative regulation requires certain terminology and complies with KRS Chapter 13A. The administrative regulation also ensures agencies with purchase delegation are periodically audited for compliance with their delegation responsibilities.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state agencies of the executive branch are affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Minimal impact will occur. Procurement personnel will have to attend training offered by the Finance Cabinet or recognized organization.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(9) TIERING: Is tiering applied? Tiering does apply. State agencies are delegated varying levels of purchasing authority based on the size and capabilities of the agencies.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:305. Performance bonds; forms; payments.

RELATES TO: KRS 45A.100, 45A.195

STATUTORY AUTHORITY: KRS 45A.035, 45A.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate [is authorized by KRS 45A.055 to publish state purchasing] administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.190 and 45A.195. The amendment (amendments) to this administrative regulation revises the reference to "invitation for bids" to "solicited-
Section 1. (1) Every contractor to whom it is proposed to award a contract for construction services costing more than $25,000 shall, prior to the award of such contract, give bond or bonds to the Commonwealth of Kentucky, as obligee, in form satisfactory to the purchasing agency, executed by a surety company authorized to do business in Kentucky, and in a penal sum equal to 100 percent of the contract price as it may be increased, the conditions of which shall bind the contractor, as principal, and the surety to the performance of the contract according to the terms, conditions and specifications of the contract, and in any changes or modifications thereto, and to the payment of all costs for labor, materials, equipment, supplies, taxes, and other proper charges and expenses incurred or to be incurred in the performance of the contract.

(2) Every contractor to whom it is proposed to award a contract for construction services costing $25,000 or less, shall, prior to the award of the contract, give bond to the Commonwealth of Kentucky, as obligee, as provided in subsection (1) of this section, if [when] required by the terms of a solicitation [invitation for bid; or solicitation for proposals; or competitive negotiations pursuant to KRS 45A.025 and 45A.060].

Section 2. The provisions of Section 1 of this administrative regulation notwithstanding, every contractor to whom it is proposed to award a contract for the purchase of commodities, supplies, [or] equipment or services by the Commonwealth of Kentucky [or any state agency] shall, if [when] required by the terms of a solicitation [an invitation for bids; or solicitation] or request for proposals, give bond to the Commonwealth of Kentucky, as obligee with surety satisfactory to the purchasing agency, in a penal amount, not to exceed 100 percent of the contract price, to be determined by the purchasing agency as sufficient to assure faithful performance of the contract by the contractor according to its terms.

Section 3. A contract shall not be awarded to a [any] contractor who fails or refuses to give bond to the Commonwealth of Kentucky if [when] required as provided by KRS 45A.190 and this administrative regulation.

Section 4. A contractor may be declared in default of a [his] contract with the Commonwealth of Kentucky, and a [his] bond forfeited, if [when] it is determined by the purchasing official that the contractor is in breach of the terms and conditions of the contract, including, in contracts for construction services, failure to make timely payment of bills for labor, materials and supplies as evidenced by liens filed against the construction fund by laborers and suppliers pursuant to KRS 376.195, 376.260, or by letters of indubiousness filed with the purchasing agency evidencing that these bills are due and have not been paid by the contractor.

Section 5. (1) The form of performance and payment bond required to be given by construction contractors pursuant to Sections 1 and 2 of this administrative regulation, including the terms and conditions of the performance and payment bond [together with any revisions as may from time to time be made in such bond], shall be published in the Finance and Administration Cabinet "Manual of Policies and Procedures" incorporated by reference as an administrative regulation pursuant to KAR 50:021 [50:220]. The form of the bond shall be applicable to, and included in all contracts for construction services if [when] required by KRS 45A.190 and this administrative regulation, except [provided, however, that such bond form or terms may be modified, if [the different terms substituted or other terms added when] in connection with a particular procurement, it is determined, in writing, by the purchasing officer that the modification, substitution or addition of terms] is reasonably required for the procurement in the best interest of the Commonwealth of Kentucky.

(2) The form of bond required to secure the performance of all other contracts for the purchase of commodities, supplies, equipment or services by the Commonwealth [procurement] shall be the standard form of performance or payment bond [such as is usually and customarily written and issued by surety companies authorized to do business in Kentucky, plus any together with the additional terms as may be] required by the purchasing agency and agreed to by the surety.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY. July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of your intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates standards for the issuance of performance bonds to state contractors.
(b) The necessity of this administrative regulation: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.195 requires the Finance and Administration Cabinet to promulgate regulations covering the form of bonds.
(c) How this administrative regulation conforms to the content of the authorizing statute: The administrative regulation promulgates performance bond standards required by KRS 45A.190 and 45A.195.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation promulgates standards for performance bonds in state contracting.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment changes terminology resulting from the reorganization of the cabinet, implementation of MARS, and KRS Chapter 13A requirements.
(b) The necessity of the amendment to this administrative regulation: The amendment promulgates compliance with KRS Chapter 13A.
(c) How the amendment conforms to the content of the authorizing statute: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statute: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies and vendors seeking state contracts.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or, by the change if it is an amendment: This amendment will have little or no impact.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in 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
(9) TIERING: Is tiering applied? No, all state agencies treat vendors and contractors equally when seeking contracts requiring performance bonds.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS 45A.080
STATUTORY AUTHORITY: KRS 45A.035, 45A.080
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.035 to promulgate (45A.055 to publish state purchasing) administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements KRS 45A.080. The amendment to this administrative regulation changes references from "invitation for bid" to "solicitation", which is the current terminology for the document, and changes references to the Division of Purchases to the Division of Financial and Procurement Services, based on the reorganization of the Finance and Administration Cabinet. In addition, this amendment allows solicitations to be posted to the Finance and Administration Cabinet’s website to satisfy the public notice requirement and deletes the out-dated reference to the electronic Vendor Information Program. The amendment also brings the administrative regulation into compliance with KRS Chapter 13A. [This amendment updates the administrative regulation to reflect recent statutory changes making advertisement for bids discretionary and requiring procurement by the Commonwealth on the basis of best value.]

Section 1. (1) The purchasing agencies of the Commonwealth shall cause adequate public notice of solicitations [invitations for bids] pursuant to KRS 45A.080(3).
(2) In addition to any other public notice given pursuant to KRS 45A.080(3), solicitations shall be posted to the Finance and Administration Cabinet’s procurement website. [Adequate public notice may include publication in conformance with KRS 45A.080(3).]
(3) An agency shall transmit an invitation for bid by:
(a) Sending a copy to at least ten (10) persons listed in a source list for the item that is the subject of the invitation for bid; or
(b) If less than ten (10) persons are listed in the source list, to all persons listed in the source list; or
(c) Electronically uploading an invitation for bid to the electronic Vendor Information Program operated by the Division of Purchases, Finance and Administration Cabinet, if it has been determined by the Director, Division of Purchases, that reasonable access to the Vendor Information Program Bulletin Board System is available to potential bidders.

Section 2. (1) A bid shall comply with the instructions contained in the invitation for bid.
(2) A bidder shall submit a signed bid on the form furnished by the purchasing agency.

Section 3. Bidders shall submit their bids at the place and at, or prior to, the date and hour set in the invitation for bids. Bids received after the hour set for opening bids shall be marked late. A late bid shall not be considered for an award unless no other bid is received in response to an invitation for bids. The late bid, together with the envelope in which the bid was submitted bearing the stamped date and hour of receipt of the bid, shall be retained in the invitation for bids file. Only those late bids postmarked prior to the scheduled opening date shall be considered for award.

Section 4. All bids, and any modifications to bids previously filed, received prior to the date and hour fixed for opening bids shall be kept secure and unopened. Envelopes containing bids but not marked to indicate that they contain a bid may be opened to identify the contents of the envelope and shall be marked and resealed.

Section 5. [5] The purchasing officer or other employee of the purchasing agency designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. The purchasing officer or designee shall [he shall then and there personally, in the presence of all persons in attendance (the bidders or their representatives and anyone eligible to attend the bid opening), open all bids received as of that date and hour.] If practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except where it is deemed impractical, due to the nature or complexity of a solicitation [an invitation for bids], a bid tabulation summary sheet shall be prepared for each solicitation [invitation for bids] recording the name of each bidder, a description of the supplies or services bid and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the solicitation file [pertaining to that invitation for bids] and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted during the formal bid opening process.

Section 6. [6] The bids shall be examined by the purchasing officer responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the solicitation [invitation for bids], and the supplies or services bid evaluated for conformity with the specifications contained in the solicitation. A [invitation for bids; every] bidder shall, if requested by the purchasing officer responsible for the [particular] procurement, clarify, in the format specified by the purchasing officer, any matter contained in the submitted bid about which the purchasing officer has question or believes in good faith needs to be clarified. The bid of any bidder who fails or refuses, within a reasonable time, to give a clarification, if [of his bid, or any part thereof, when] requested to do so by the purchasing officer, shall not be considered further for an award on the basis of the solicitation [invitation for bids]. The clarification [of a bid, or a part of a bid] shall be incorporated in any contract awarded on the basis of that bid. After a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid offers the best value to the Commonwealth. After evaluation of the bids, including consideration of any clarifying information submitted by [the bidders], the purchasing officer may determine that no satisfactory bid has been received and all bids may be disqualified [rejected]. At the discretion of the purchasing officer, the solicitation [invitation for bids] may be cancelled and new bids solicited [invited] on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the disqualification [rejection] of all bids and subsequent action taken or to be taken with respect to the solicitation [invitation for bids] shall be recorded and filed in the solicitation [invitation for bids] file relating to the [particular] procurement.

Section 7. [7] (1) The right to disqualify [reject] any bid and to waive technicalities and minor irregularities in bids shall be preserved in the case of all solicitations [invitations for bids] issued by purchasing agencies within the Finance and Administration Cabinet or pursuant to delegations of purchasing authority by the Finance and Administration Cabinet.
(2) Grounds for the disqualification [rejection] of bids include:
(a) Failure of a bid to conform to the essential requirements of a solicitation [invitation for bids];
(b) Failure to conform to the specifications contained or referenced in a solicitation, [an invitation for bids] unless the solicitation [invitation] authorized the submission of alternate bids and the items
offered as alternatives meet the requirements specified in the solicitation [invitation].

(c) Failure to conform to a delivery schedule established in a solicitation [invitation for bids].

(d) Imposition of [imposing] conditions which modify the terms and conditions of the solicitation [invitation for bids], or limit the bidder's liability to the state on the contract awarded on the basis of a solicitation [such invitation for bids].

(e) Submission of an unreasonable price. Any determination by the purchasing officer that a bid is unreasonable as to price shall be documented.

(f) Nonresponsibility of a bidder.

(g) Failure to furnish a bid guarantee if required by a solicitation [an invitation for bids].

(h) Other cause as documented by the purchasing officer in a determination and finding.

(3) Technicalities or minor irregularities in bids, which may be waived if the purchasing officer determines that it will be in the Commonwealth's best interest to do so, are mere matters of form not affecting the material substance of a bid or an immaterial deviation from or variation in the precise requirements of the solicitation [invitation for bids] having no or a trivial or negligible effect on price, quality, quantity, [or] delivery of supplies, or performance of the services, being procured, the correction or waiver of which will not affect the relative standings of, or be otherwise prejudicial to other bidders. The purchasing officer may [either] give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in a [the] bid, or waive the [such] deficiency if it is advantageous to the Commonwealth to do so.

Section 5. (a) If a mistake in a bid is claimed, and the purchasing officer determines that [the evidence is clear and convincing that] a material mistake was made in the bid and that due to such mistake, the bid submitted was not the bid intended, the bidder shall be permitted to withdraw the [the] bid. [It shall be the duty of all contractors bidding to carefully review and verify the accuracy of their bids both before submitting them and prior to execution of a contract.] If a mistake in a bid is claimed after the award and execution of a contract [on the basis of such bid], the contractor shall be required to perform according to the terms and conditions of the contract, unless it is determined in writing by the Finance and Administration Cabinet [established by clear and convincing evidence] that a material mistake had been made in the original bid and [that] the contractor will sustain a financial loss if required to perform the contract according to its terms. A reduction or diminution in profit margin shall not be deemed a financial loss under this section. If it is determined that the evidence is not [clear and convincing] that a material mistake has been made in a bid after the award of a contract, and the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon resolicitation for the commodity or service.

Section 9. The following matters shall apply to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities, supplies and equipment pursuant to KRS 45A.080 and this administrative regulation:

(1) Time discounts may be considered if the Division of Purchases or the purchasing agency deems it in the Commonwealth's best interest.

(2) Trade discounts shall be deducted by the vendor in calculating the unit price quoted, unless otherwise indicated in the bid.

(3) Quantity discounts shall be included in the price of the item. If not included in the item price, the discount shall be considered only if the purchasing agency deems it to be in the Commonwealth's best interests. The unit price shown on the contract shall be the net price, less the discount unless otherwise indicated in the bid.

(4) Cash discounts shall not be considered.

(5) In case of a discrepancy in the extension of a price of the unit or item price shall govern the total price of all items.

(6) An award may be made to a bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the Commonwealth's best interest. The methods and bases of award of contract and of evaluation of bids shall be stated in the invitation for bids.

(7) If the purchasing agency has invited competitive sealed bids or request for proposals, telegraphic or facsimile responses shall not be accepted.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6690, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.035 and 45A.080.
(b) The necessity of this administrative regulation: This administrative regulation sets out the requirements and procedures for soliciting bids for state contracts.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.035 to promulgate administrative regulations governing the opening and rejection of bids or offers, consideration of alternate bids, and waiver of informalities in offers. Also, this administrative regulation promulgates procedures for competitive sealed bidding authorized by KRS 45A.080.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the policies and procedures for soliciting bids for contracts on a competitive basis.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment will change references from "invitation for bid" to "solicitation," which is the current terminology for the document, and change the lead in the Division of Purchases to the Division of Material and Procurement Services, based on the reorganization of the Finance and Administration Cabinet. In addition, this amendment allows solicitations to be posted to the Finance and Administration Cabinet's website to satisfy the public notice requirement and deletes the out-dated reference to the electronic Vendor Information Program. The amendment also brings the administrative regulation in compliance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Updated policies and procedures are needed to provide guidance for state agencies on how to solicit competitive bids. In addition, by posting all solicitations on the Finance and Administration Cabinet's website, more competition is encouraged as more vendors may have access to the solicitations. Provisions to allow online bidding are needed to further promote competition.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies and vendors seeking state contracts.

(4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have limited impact. The amendment will require that all solicitations be posted on the Commonwealth’s procurement website. Solicitations are automatically posted when completed in the Management Administrative Reporting System (MARS).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

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

(9) TIERING: Is tiering applied? No, state agencies are required to solicit competitive bids in the same manner.

**FINANCE AND ADMINISTRATION CABINET**
Office of the Secretary
(Amendment)


RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035, 45A.085, 45A.090
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035
authorizes the Secretary of the Finance and Administration Cabinet to promulgate [is authorized by KRS 45A.035 to publish state purchase regulations; administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.085 and 45A.090 relating to competitively negotiated contracts. This amendment changes the reference to the Division of Purchases to the Division of Material and Procurement Services, based on the reorganization of the Finance and Administration Cabinet, and correct clerical or typographical errors. The amendment also changes "invitation to bid" to "solicitation." The amendments to this administrative regulation authorize the purchasing agency to establish a funding limitation for a competitively negotiated contract and provide that vendor source lists shall not be subject to public inspection until negotiations have been completed. These amendments also establish procedures for conducting discussions with vendors. The reference to "purchasing officer" is changed to "purchasing officer" to make the language of this administrative regulation consistent with the terminology of KRS Chapter 13A. These amendments also bring the administrative regulation into compliance with the drafting rules established under KRS Chapter 13A.

Section 1. (1) A contract may be awarded by competitive negotiation if the purchasing officer determines in writing that:
(a) [When] Due to the complex nature or technical detail of a particular procurement, specifications cannot be fairly and objectively prepared so as to permit competition in the solicitation of sealed bids; or
(b) [When, in the opinion of the purchasing officer, specifications cannot be fairly and objectively prepared so as to permit competition in the invitation for sealed bids, or for] High technology electronic equipment is available from a limited number of sources of supply and [for] specifications cannot practically be prepared except by reference to the specifications of the equipment of a single source of supply; or
(c) Solicitation of [or, when it is otherwise determined by the purchasing officer that the invitation for competitive sealed bids is not practicable; or
(d) [or when it is determined by the purchasing officer that the] Conditions described in KRS 45A.085(3) or 45A.090(1) exist, and except for procurements under KRS 45A.065 and 45A.100, and administrative regulations adopted pursuant to these statutes, a contract may be awarded by a procurement by competitive negotiation authorized by KRS 45A.035 and 45A.090 and this administrative regulation. The purchasing officer shall make a written determination of the reasons it is considered impractical to invite bids prior to initiating any other action leading toward the award of a contract on the basis of competitive negotiations.

Section 2. (1) If [When] it has been determined that it is not practical to solicit [invite] competitive bids as provided in Section 1 of this administrative regulation, except when such determination is based on the existence of the conditions mentioned in KRS 45A.085(3) or 45A.090(1), action to obtain a procurement by competitive negotiations shall commence by [advertisement and] solicitation of [for] written proposals in the manner specified by KRS 45A.080(3) and administrative regulations adopted pursuant to this statute.

(2) [The advertisement or] solicitation of [for] proposals for competitive negotiations shall state:
(a) [For] That the purchasing agency proposes to enter into competitive negotiations with responsible offerors [for a procurement];
(b) [The] The date, hour and place that written proposals [for the procurement] shall be received;
(c) [The type of procurement involved;]
(d) [A description of the supplies or services sought;]
(e) [And a description of the supplies or services sought; provided, however, that] Detailed specifications, or the location where detailed specifications may be obtained;
(f) [need not be listed in newspaper advertisements, or solicitations for proposals sent to vendors listed on a source list maintained by the purchasing agency if it is considered impractical by the purchasing officer to do so, but potential offerors shall be informed by advertisement or solicitation where such detailed specifications, if available for the particular procurement, may be obtained;]
(4) The evaluation factors to be considered by the purchasing agency in the competitive negotiations in determining the proposal most advantageous to the Commonwealth;
(5) [and] The proposed method [of methods] of award of contract.

(6) Such] Other information as, in the opinion of the purchasing officer, may be desirable or necessary to reasonably inform potential offerors about the requirements of the procurement or the limits [or bounds] of the competitive negotiations;
(l) The existence of [proposed to obtain] the procurement,
(6) [A funding limitation may be set by the purchasing agency, if determined to be in the best interest of the Commonwealth; and]
(l) [Potential offerors shall be advised of the advertisement or solicitation or, in the case of competitive negotiations, the existence of the existing funding limitation; the amount of the funding limit, if [will be determined and placed on file with the purchasing agency prior to the receipt of proposals. The amount of the funding limit shall not be disclosed unless it is determined by the Director of the Division of Material and Procurement Services [Purchasing] or the Director of the Division of Contracting and Administration for procurements undertaken by those divisions that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the Commonwealth;]
(3) If a funding limit has been established, proposals that [Proposals which] exceed the funding limit may be rejected.

Section 3. All written proposals received by the purchasing agency in response to a [advertisement or] solicitation [for] proposals for competitive negotiations shall be kept secure and unopened until the date and hour set for opening the proposals. Proposals [for competitive negotiations] not clearly marked as such [on the envelope in which received] may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 4. At the close of business on, or at the beginning of the next business day after the date fixed for receiving proposals for
competitive negotiations, all proposals received as of the close of business on that date shall be transmitted to the purchasing officer for the procurement for opening. Proposals for competitive negotiations and related vendor source lists shall not be subject to public inspection until negotiations between the purchasing agency and all offerors have been concluded and a contract awarded to the responsible offeror submitting the proposal determined by the purchasing officer in writing to be the most advantageous to the Commonwealth, based upon the price and the evaluation factors set forth in the solicitation for proposals.

Section 5. (1) The purchasing officer shall examine each written proposal received for general conformity with the [advertised] terms of the procurement. If it has been provided in the [advertisement or solicitation for proposals] that an award may be made without written or oral discussions, the purchasing officer may, upon the basis of the written proposal received, award the contract to the responsible offeror submitting the proposal determined in writing to be the most advantageous to the Commonwealth, price, and the published evaluation factors considered. If, after the proposals have been examined, it is determined that written [or oral] discussions should be had with the offerors, the purchasing officer shall determine in writing, based on an individual review, those proposals received [for or]50 that are to be [preliminarily] [suspended] [of being] selected for award of a contract [for the procurement]. Each responsible offeror that is to be [preliminarily] [suspect] selected for award of a contract shall be contacted [informally] by the purchasing officer and a meeting scheduled for discussion of the offeror’s proposals. Discussions need not be conducted under the circumstances of or relative to the topics enumerated in KRS 45A.0560(a), (b) or (c).

(2) Discussions with offerors shall be held informally and may be conducted orally, in writing, or both [orally and in writing], as determined by the purchasing officer to be the most advantageous to the Commonwealth. If, however, after discussions with all responsible offerors have concluded, or after examination of the written proposals initially submitted, it is determined that no acceptable proposal has been submitted, any [or all] of the proposals may be rejected and, in the discretion of the purchasing officer, new proposals may be solicited as provided in this administrative regulation on the basis of the same, or revised terms, or the procurement may be abandoned.

(3) Procedures for conducting negotiations and for the manner in which proposals will be evaluated shall be established by the purchasing officer for each procurement and [which] shall be set forth in the request for proposals. The purchasing officer may [shall be authorized] to request offerors to submit written clarification or explanation of their proposals and the proposal of any offeror who fails to respond or to request [ask or for] an extension of time to respond within the time requested, may be rejected.

(4) Proposals shall be evaluated based on factors stated in the request for proposals. Numerical or other appropriate rating systems may be used. All evaluation documentation, scoring, and summary conclusions shall be in writing, and made a part of the file records for the procurement.

(5) The purchasing officer may notify offerors that as of a date stated negotiations shall be closed and no further negotiations modifications or clarifications of proposals may be received.

Section 6. The purchasing officer shall prepare a written summary of all oral discussions in competitive negotiations setting forth both the [date at] dates [of discussions with all responsible offerors] and the general substance of the discussions. Verbatim records of the discussion shall not be required.

Section 7. If [when it is determined in writing by the purchasing officer that] the conditions mentioned in either KRS 45A.065(2) or 45A.090(2) exist with respect to any particular procurement, competitive negotiations may be undertaken to obtain the requirements of such procurement as provided by KRS 45A.065(3) or 45A.090(4), and according to the procedures set forth in Sections 3 to 7 of this administrative regulation.

Section 8. When, after solicitation for proposals to enter into competitive negotiations only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the Secretary before September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9975.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation promulgates standards and procedures for competitively negotiated contracts for solicitations offered by the Commonwealth.
(b) The necessity of this administrative regulation: The secretary of the Finance and Administration Cabinet has authorized by KRS 45A.035, to promulgate regulations addressing source selection methods. Also, this administrative regulation provides policies and procedures to implement the requirements of KRS 45A.085 and 45A.090 regarding competitively negotiated contracts entered into by the Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statute or statute: In accordance with KRS 45A.085 and 45A.090, this administrative regulation promulgates standards for when and how competitive negotiation will be used to award state procurement contracts.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation clarifies the standards for when and how agencies shall competitively negotiate before awarding contracts with the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment: will change this existing administrative regulation: The amendment updates terminology and organization names, and it brings the administrative regulation into compliance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment aids in fulfilling the requirements of KRS 45A.085 and 45A.090 by providing state agencies with updated guidance on competitive negotiations.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all state
agencies and vendors seeking state contracts.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have little or no impact. The types of contracts awarded by competitive negotiation will not change.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding 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 increases to 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.

(9) TIERING: Is tiering applied? The administrative regulation does not provide for tiering because the use of competitive negotiation depends on the type of solicitation, and is not dependent on the issuing agency or vendor.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS 45A.095
STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 45A.095
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.095. This amendment changes the reference to the Division of Purchases to the Division of Material and Procurement Services, based on the reorganization of the Finance and Administration Cabinet, and changes terminology and procedures based on the state's procurement system. The amendment also deletes typographical errors and changes language to conform to KRS Chapter 13A. This administrative regulation is being amended to revise the reference to "purchasing official" to "purchasing officer" in order to make the administrative regulations more consistent with terminology used in KRS Chapter 45A. These amendments also broaden the type of contracts which may be awarded on the basis of noncompetitive negotiations to include contracts for instructional equipment and supplies; contracts for the purchase of fresh food and perishable items; and contracts for the purchase of limited goods or services which cannot reasonably or practically be obtained through competitive bidding. These amendments also make several changes to statutory references.

Section 1. [Procurement contracts may be awarded through noncompetitive negotiations only as provided in this administrative regulation. Contracts which may be awarded on the basis of noncompetitive negotiations only for [include, and shall be limited to the following:]

(1) Telephone [Contractual services for telephone service, electrical energy and other public utility services;]

(2) Other [and other contractual] services provided within a defined geographic area pursuant to a franchise [for such service] awarded pursuant to law by a city, county or other political subdivision authorized to award such franchise;

(3) [provided, however, that except for telephone and other public utility services, the invitation for bids or the award of a contract by competitive negotiation for other contracts shall be performed under a franchise awarded by a political subdivision in the best interest of the Commonwealth; as shall the award of a contract for the purchase of a telephone system to serve the internal needs of state agencies or institutions;]

(4) by invitation for bids or on the basis of competitive negotiations shall be preceded under this regulation.

(22) Commodities, equipment, or [and] services available [in the discretion of the purchasing officer] from a sole [single] source, as determined by the purchasing officer in writing;

(5) Such items shall include, but not be limited to, patented equipment and copyrighted material, and equipment peripheral to other equipment already owned by the Commonwealth or any state agency determined by the purchasing officer to be incompatible to such other equipment without modification, or adjustment, or either the equipment already owned or the equipment to be acquired.

(34) [Instructional materials, equipment, or [and] supplies available [in the discretion of the purchasing officer] from a sole [single] source and necessary to a particular instructional program, as determined by the purchasing officer in writing;]

(6) A written determination setting forth the need in relation to a particular instructional program, and justifying the procurement of the particular materials on a noncompetitive basis, shall be made by the purchasing officer prior to the award of the contract.

(43) Special supplies or equipment required for laboratory or experimental studies and necessary to a particular study, as determined by the purchasing officer in writing;

(7) A written determination setting forth the need in relation to such studies, and justifying the procurement of such supplies or equipment on a noncompetitive basis shall be made by the purchasing officer prior to the award of contract.

(55) Contracts or subscriptions for the purchase of published books, maps, periodicals, technical pamphlets, and except for those specially commissioned for use by an agency which shall be contracted for as provided by subsection (9) [of this section, recordings, films, and works of art for museum or [and] public display;]

(9) [Commercial items purchased from a wholesaler, manufacturer, or producer of the item for resale to the general public through a resale outlet maintained by a state agency;]

(9) [Such items shall be purchased only from a wholesaler, manufacturer or producer of the item or items;]

(7) Contracts for professional, technical, scientific, or artistic services, except [except for contracts for architectural or engineering services negotiated in accordance with the provisions of KRS 45A.805 [45A.205], or agreements with multiple vendors of medical or health care and related services, and fixed rates of payment for those [such] services as prescribed by state or federal law or regulations, and entered into for the benefit of persons who are wards of the Commonwealth or who are otherwise entitled pursuant to law to the provision of health care and related [such] services by the Commonwealth;]

(10) [all contracts for professional, technical, scientific, or artistic services by state agencies shall be made, awarded and entered into only as provided in KRS 45A.090 to 45A.735;]

(11) [Contracts or agreements for the purchase or sale of Commodities, supplies, equipment, or [and] construction services that would ordinarily be purchased on a competitive basis if [when] an emergency has been declared in the manner prescribed by KRS 45A.095(2) and (3);]

(12) [Contracts with vendors who maintain a general service administration price agreement with the United States of America, if the contract between the Commonwealth and the vendor does not [or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between the general service administration and the vendor;]

(14) [(44) Contracts for the purchase of real property[;] interests in real property[;]

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AND PROCUREMENT SERVICES [PURCHASES].

Section 2. Contracts for professional, technical, scientific, or artistic services under Section 1(a) of this administrative regulation shall be awarded and entered into only as provided in KRS 45A.690 to 45A.725.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-8660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation promulgates policies for the use of noncompetitive negotiation to award procurement contracts.
(b) The necessity of this administrative regulation: This administrative regulation implements the provisions of KRS 45A.095 regarding noncompetitive negotiated contracts entered into by the Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: In accordance with KRS 45A.095, this administrative regulation promulgates policies for when noncompetitively negotiated state procurement contracts may be sought.
(d) How this administrative regulation currently assists or will assist in the effective administration of the The administrative regulation clarifies which types of contracts state agencies may award by noncompetitive negotiations.
(2) If 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 reference to the Division of Purchases to the Division of Material and Procurement Services, based on the reorganization of the Finance and Administration Cabinet, and changes terminology and procedures based on policies and procedures for the state’s procurement system. Also, the amendment deletes typographical errors and changes language to conform to KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation provides state agencies with clarifications and guidance for when they may award contracts based on noncompetitive negotiations.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all state agencies and vendors that seek state contracts for items covered by the administrative regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to the administrative regulation will have little or no impact.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase or change 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.
(9) TIERING: Is tiering applied? Tiering is not applied. If non-competitive negotiation is permitted is determined by the type of commodity sought, not the characteristics of the state agency or vendor.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary (Amendment)

200 KAR 5:310. Multiple contracts.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.035 to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.035(2)(f) and (h). The amendment to [The amendments to] this administrative regulation changes "invitation for bid" to "solicitation", updates other terms to conform with those used in the state’s procurement system, and corrects typographical errors. The amendment also changes language to conform to KRS Chapter 13A, change references to "purchasing official" to "purchasing officer", change terms used in KRS Chapter 45A, and make changes to bring the administrative regulation into compliance with KRS 13A.222(4)(b).

Section 1. Multiple contracts may be awarded on the basis of a single solicitation, if [an invitation for bids as after competitive negotiations when] it is determined in writing by the purchasing officer in advance of the solicitation that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest, that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest, that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest, that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest, that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest, that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest, that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest, that award of contracts will result in the best interests of the Commonwealth, and the commonwealth is acting in the public interest.

Section 2. If [When] it is determined in writing by the purchasing officer after the evaluation of competitive bids, or the closing of competitive negotiations, that bids or offers substantially and materially responsive to the terms of the procurement have been received
for only a part [or part of] of the requirements of the procurement, [and the bids or offers received for another part or parts of the procurement are not substantially and materially responsive to terms of the procurement,] a contract or contracts may be awarded as to the part [or parts of] of the procurement for which responsive bids or offers have been received, [and the Bids or offers determined to be nonresponsive shall be disqualified and new bids or offers may be [may be rejected in the discretion of the purchasing officer and new bids invited, or proposals for competitive negotiations for the procurement advertised] solicited, on the same or revised terms, conditions and specifications.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at the public hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6680, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation promulgates policies and procedures for the awarding of multiple contracts awarded from single solicitations issued by the Commonwealth.
(b) The necessity of this administrative regulation: This administrative regulation implements the requirements of KRS 45A.035(2)(f) and (h) by informing agencies and vendors when and how multiple contracts may be awarded.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.035 to promulgate administrative regulations implementing the Kentucky Model Procurement Code, including those that address awarding multiple contracts from a single solicitation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation implements the provisions of KRS 45A.035(2).
(e) If 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 changes "invitation for bid" to "solicitation", updates other terms to conform with those used in the state's procurement system, and corrects typographical errors. The amendment also changes language to conform to KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment updates the policies and procedures for awarding multiple contracts to clarify the process for state agencies and vendors.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all state agencies and vendors seeking the award of state procurement contracts.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in 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.
(9) TIERING: Is tiering applied? Tiering is not applied. The nature of the procurement or its geographical availability determines if multiple contracts will be awarded.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.210(1)
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.210(1) to promulgate (45A.035 to publish state purchasing administrative regulations permitting or requiring inclusion in procurement contracts of clauses enabling the Commonwealth to effect changes or modifications in contracts. This amendment changes the term "advice to change in order" to "modification" and "advertisement and solicitation for proposals" to "request for proposals", as currently used by the state's procurement system. This amendment also corrects the administrative regulation to conform to KRS Chapter 13A, (for the Impelementation of the Kentucky Model Procurement Code, KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.210(1). These amendments change the reference of "purchasing official" to "purchasing officer" and make changes to bring the administrative regulation into compliance with KRS 13A.222(1)(c).

Section 1. The purchasing agencies within the Finance and Administration Cabinet, and any state agency to whom purchasing authority has been delegated by the Finance and Administration Cabinet, may [shall be authorized to] provide by appropriate clauses to contracts for supplies or services [of all types] for changes and modifications, and [providing for the method or methods of calculating the costs of any decrease, increase, or other change in the contract price resulting from the [contract change or modification], in contracts, other than construction contracts, for the purchase in fixed amounts of commodities, supplies and equipment, an increase in quantity of more than [increases in quantities in excess of] ten (10) percent of the original quantity, fixed by the contract shall be permitted unless the solicitation [invitation for bid or advertisement and solicitation for proposals for competitive negotiations for the procurement] informed prospective bidders or offerors that an increase in quantity [quantities] might be forthcoming, nor shall increases in unit prices be permitted [in such contracts for increased quantities] except as provided by a price escalation clause [formula] authorized by the solicitation [invitation for bid] or request for proposals [for competitive negotiations].

Section 2. All changes [or modifications] to contracts for the purchase of commodities, supplies, equipment and construction
services shall be effected by a modification [an advice of change in ordered] to the contract (which shall be supported by the purchasing officer documenting the reason and basis for the change or modification to the contract]. A copy of the modification and documentation from the purchasing officer stating the reason and basis for the modification shall be [advice of change in order and the supporting documentation relative to any change or modification to a contract shall be filed and maintained in the contract file by the purchasing agency.]

[Section 3. Every contractor awarded a contract containing clause authorizing changes or modifications to the contract shall be deemed, by acceptance of the contract, to have agreed to the changes or modifications of the contract as provided therein.]

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 303, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.210.

(b) The necessity of this administrative regulation: This administrative regulation sets out the requirements and procedures for modifying contracts issued by state agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.210(1) to promulgate proper administrative regulations permitting or requiring the insertion of appropriate clauses to enable the Commonwealth to effect desired changes and modifications in contracts for the procurement of supplies or services.

(d) How this administrative regulation assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the policies and procedures for modifying contracts.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the term "advice of change in order" to "modification" and "advertisement and solicitation for proposals" to "request for proposals."

(b) How the amendment will assist in the effective administration of the statutes: See (1)c above.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Comment)

200 KAR 5:312. Termination of contracts.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.210(2). (3) NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.210 to promulgate [45A.055 to establish state purchasing administrative regulations for the termination of contracts for the procurement of supplies or services, or both supplies and services. This amendment adds procedures by which a contract may be terminated by the Commonwealth. The amendment also brings the regulations into compliance with the requirements of KRS Chapter 13A, implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.210(2). (3). These amendments revise the reference to "purchasing official" to the "contracting officer," to make the administrative regulations conform with the terminology used in KRS Chapter 13A.

Section 1. General Terms. (1) Any contractor who is determined in writing by the purchasing officer to be in breach of any of the terms and conditions of a contract with the Commonwealth of Kentucky [held by such contractor], shall, in the discretion of the purchasing officer, be declared in default and the [such] contract may be terminated [as a result of such default].

(2) Termination notice. The purchasing officer shall terminate a contract by written notice to the contractor. The notice to the contractor shall be sent certified mail and return receipt requested, and shall state:

(a) The contract is being terminated for the convenience of the Commonwealth, for default by the contractor, or for nonappropriation, in accordance with this administrative regulation;

(b) The effective date of termination;

(c) The extent of termination; and

(d) Any special instructions.

Section 2. Termination for Default. (1) The Commonwealth may terminate a contract because of the contractor’s failure to perform its contractual duties.

(2) If a contractor is determined to be in default, the Commonwealth shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. The Commonwealth may proceed with termination if the contractor fails to cure the deficiencies within the speci-
fied time.

(3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
(a) Failure to perform the contract according to its terms, conditions and specifications;
(b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
(c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics’ liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
(d) Failure to diligently advance prosecute the work under a contract for construction services;
(e) The filing of a bankruptcy petition by or against the contractor;
(f) Actions that endanger the health, safety or welfare of the Commonwealth or its citizens.

(4) a(3) The Commonwealth shall not be liable for any further payment to a contractor under a contract terminated for the contractor’s default after the date of termination [such default], as determined by the purchasing officer except for commodities, supplies, equipment or services delivered and accepted on or before the date of termination [default] and for which payment had not been made as of that date. The Commonwealth may require the contractor to transfer title, and deliver to Commonwealth completed supplies and manufactured materials. The contractor, and [or] his surety, if a performance or payment bond has been required, and evidence of loss, cost or damage sustained by the Commonwealth as a result of the contractor’s default, [provided, however, that] A contractor’s surety shall not exceed the final sum specified in the contractor’s bond.

(5) The contractor shall be liable to the Commonwealth for any excess costs incurred in acquiring supplies and services similar to those terminated for default, and for any other damages or remedies available either at law or in equity, whether or not repurchase is effected.

Section 3. Termination for Convenience of the Commonwealth.

(1) [2] The Commonwealth may terminate a contract for convenience if [shall be authorized to terminate for its convenience all contracts for the procurement of supplies and services which the purchasing officer has determined that [such] termination will be in the Commonwealth’s best interests.

(2) If a contract is terminated for the convenience of the Commonwealth, the contractor shall have the burden of establishing the amount of compensation to which the contractor believes he is entitled by the submission of complete and accurate cost data and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. The contractor shall specify and provide documentation of all revenues resulting from the contract, expenditures associated with the contract, and all profit or loss attributable to the contract. The purchasing officer may request the contractor submit additional documents and data, and may request appropriate accounting, investigations and audits.

(3) After issuing a notice of termination for convenience, the purchasing officer may [When it has been determined that a contract should be terminated for the convenience of the Commonwealth, the purchasing agency shall be authorized to] negotiate a settlement with the contractor according to terms deemed just and equitable by the purchasing agency and in accordance with this administrative regulation. The settlement shall be subject to the prior approval of the Secretary of the Finance and Administration Cabinet, or his designee. If the contractor and the purchasing officer cannot negotiate a settlement, the Secretary of the Finance and Administration Cabinet shall issue a determination of the amount, if any, due the contractor.

(4) Contractor responsibilities. After receipt of the notice of termination, the contractor shall:
(a) Stop work immediately on the terminated portion of the contract;
(b) Terminate all subcontracts related to the terminated portion of the prime contract;
(c) Immediately advise the purchasing office of any special circumstances precluding the stoppage of work;
(d) Perform the continued portion of the contract;
(e) Take action to protect and preserve property in the contractor’s possession in which the Commonwealth has or may acquire an interest, and, if directed by the purchasing officer, deliver the property to the Commonwealth;
(f) Promptly notify the purchasing officer in writing of any legal proceedings resulting from any subcontract or other commitment related to the terminated portion of the contract;
(g) Settle outstanding liabilities and proposals arising out of the termination; and

(2) In the case of a terminated construction contract, ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other actions necessary to leave a safe and healthful site.

(5) Payment.

(a) Compensation to a contractor for lost profits on a contract terminated for convenience of the Commonwealth shall not exceed an amount proportionate to the sum that the contractor’s total expected margin of profit on the contract bore to the contract price, based on the total out-of-pocket expense incurred by the contractor at the date of termination of the contract. Whenever a contract is terminated for the convenience of the Commonwealth, the contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by the submission of complete and accurate cost data and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. Payment of the sum agreed to in settlement of a contract terminated for convenience of the Commonwealth shall be made from the same source of funds or account as the original contract.

The Commonwealth shall not pay interest on the amount due under the settlement.

Section 4. Funding Out Provision. The Commonwealth may terminate a contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The contracting agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures for issuing agencies to terminate contracts for supplies and services.

(b) The necessity of this administrative regulation: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.210 to promulgate state purchasing administrative regulations for the termination of contracts for the procurement of supplies and services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The secretary is authorized to issue regulations relating to the termination of supplies or services contracts for the default of the contractor or the convenience of the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment clarifies the conditions and procedure for state agencies to follow when terminating a contract.

(2) If 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 add procedures by which a contract may be terminated by the Commonwealth. The amendment also brings the regulation into compliance with the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Updated policies and procedures are needed to provide guidance for state agencies, vendors bidding on contracts, and contractors.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state agencies that contract for goods and services and all contractors that are awarded contracts with state agencies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will provide state agencies with policies and procedures when terminating a contract. Contractors will be better informed of when and how a contract with a state agency may be terminated.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(9) TIERING: Is tiering applied? No. The administrative regulation applies equally to all state agencies and contractors.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:313. General and special conditions for bidding.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035(2)(e)
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.035 to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.035(2)(e). The amendment to this administrative regulation changes references to "invitation for bids" to "solicitation", the term used by the state's procurement system. It changes references to the Division of Purchases to the Division of Material and Procurement Services, based on the reorganization of the Finance and Administration Cabinet. The amendment also corrects typographical errors and language to conform to KRS Chapter 13A. This amendment changes the reference to the "Finance and Administration Cabinet's Policies and Procedures Manual" which is incorporated by reference as an administrative regulation pursuant to 200 KAR 5:020. This amendment also changes the reference to Department of Administration to the Department of Administrative Services in the discretion of the directors of the divisions, with the approval of the Commissioners of the Department [Departments] for Administration and the Department for Facilities Management, respectively, general conditions for bidding to the Commonwealth of Kentucky. [The divisions shall also be authorized to promulgate and adopt] in relation to a [any particular] procurement, or class of or type of procurement, the directors may also adopt special conditions, supplementary to [and in addition to] the general conditions, of bidding. The general conditions of bidding, and any revisions thereto, adopted by both the Division of Purchases and the Division of Contracting and Administration shall be published in the "Finance and Administration Cabinet's Manual of Policies and Procedures which has been incorporated by reference as an administrative regulation pursuant to 200 KAR 5:020."

Section 1. The Division of Material and Procurement Services [Purchases], for commodity and other procurement functions within its jurisdiction, and the Division of Contracting and Administration, for construction and related services and items, shall adopt, and revise [from time to time] as [may be] necessary [and consistent] in the discretion of the directors of the divisions, with the approval of the Commissioners of the Department [Departments] for Administration and the Department for Facilities Management, respectively, general conditions for bidding to the Commonwealth of Kentucky. [The divisions shall also be authorized to promulgate and adopt] in relation to a [any particular] procurement, or class of or type of procurement, the directors may also adopt special conditions, supplementary to [and in addition to] the general conditions, of bidding. The general conditions of bidding, and any revisions thereto, adopted by both the Division of Purchases and the Division of Contracting and Administration shall be published in the "Finance and Administration Cabinet's Manual of Policies and Procedures which has been incorporated by reference as an administrative regulation pursuant to 200 KAR 5:020."

Section 2. The general conditions for [of bidding shall be applicable to, and incorporated by reference in, all solicitations of bids] issued by the Division of Material and Procurement Services [Purchases], the Division of Contracting and Administration, or by any agency to which purchasing authority has been delegated [pursuant to authority contained in KRS Chapter 45A and these administrative regulations].

Section 3. Submission of a response to a solicitation shall be deemed to be an agreement [All vendors, firms, contractors and persons who submit a bid in response to an invitation for bids issued by the Finance and Administration Cabinet, or by any agency of the Commonwealth of Kentucky pursuant to a delegation of purchasing authority by the Finance and Administration Cabinet, shall be deemed to have agreed] to comply with all terms, conditions, and specifications of the solicitation [invitation for bids].

[Section 4. The general conditions of bidding, or specific portions thereof, shall be applicable to all requests for proposals for competitive negotiations pursuant to KRS 45A.095 and 45A.090, in the discretion of the purchaser agencies, provided, however, the advertisement and solicitation for proposals for competitive negotiations shall inform prospective offerors that the request for proposals shall be subject to the general conditions or parts thereof, by specific reference to the particular parts or sections of the general conditions applicable to the particular procurement to be obtained by the competitive negotiations.]

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 393, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportu-
nity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6693, fax (502) 564-8875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.035(5).

(b) The necessity of this administrative regulation: This administrative regulation sets out the conditions for bidding for state contracts.

(c) How this administrative regulation conforms to the content of the authorizing statute: The Finance and Administration Cabinet is required by KRS 45A.035(g) to promulgate administrative regulations governing the opening and rejection of bids or offers, consideration of alternate bids, and waiver of informality in offers. Also, this administrative regulation promulgates procedures for competitive bidding permitted by KRS 45A.080.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the policies and procedures for bidding for contracts and directs readers to the Finance and Administration Cabinet Manual of Policies and 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 proposed amendment will change references from "invitation for bid" to "solicitation," which is the current terminology for the document, and change references to the Division of Purchases to the Division of Material and Procurement Services, based on the reorganization of the Finance and Administration Cabinet. The amendment also corrects typographical errors and brings the administrative regulation into compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Updated policies and procedures are needed to provide guidance for state contracts.

(c) How the amendment conforms to the content of the authorizing statute: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statute: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies and vendors bidding for state contracts.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(9) TIERING: Is tiering applied? No, state agencies are required to solicit bids in the same manner.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:314. Disclosure of contractor's financial records and information to certain governmental entities.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035(5)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.035 to promulgate this administrative regulation to allow [...] This administrative regulation is required due to the recent Supreme Court decision styled Marine Management Services, Inc., et al. v. Commonwealth and Legislative Program Review and Investigation Committee, 43 KLR 5 (May 10, 1993). In the opinion, the court held that the financial information of contractors could not be disclosed to the Legislative Program Review and Investigation Committee under the Open Records Act. This ruling may affect the ability of certain governmental oversight agencies to obtain access to financial data of state contractors. This amendment corrects the administrative regulation to conform to KRS Chapter 13A. This proposed administrative regulation would provide for the disclosure of information to the contracting agency, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purposes of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were [was] providing the service.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-
VOLUME 30, NUMBER 3 -- SEPTEMBER 1, 2003

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.035(2)(g).
(b) The necessity of this administrative regulation: This administrative regulation provides state agencies issuing contracts with language that must be in all contracts.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.035 to promulgate administrative regulations governing bidding on state contracts. This administrative regulation sets out language for all state contracts that will allow governmental oversight agencies to access the financial information of state contractors.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties to a contract with the Commonwealth that the state’s oversight agencies may have access to contractors’ financial data.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment will correct typographical errors and bring the administrative regulation into compliance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment will provide updated language in the correct form for state agencies to include in all state contracts.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies, and all individuals, firms, organizations, and political subdivisions doing business with the Commonwealth.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in 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
(9) TIERING: Is tiering applied? No, all state contracts must conform to the administrative regulation.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:315. Disciplinary action for failure to perform.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.035 to promulgate [45A.035 to publish state purchasing] administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.035(2)(b). The amendment [amendments] to this administrative regulation corrects typographical errors, updates terms used in the state’s procurement system, deletes references to the source list that is no longer used, and corrects language to conform to KRS Chapter 13A. [change references to "bidders list" to "source list" and also brings the administrative regulation into compliance with KRS 13A.222(1)(C)].

Section 1. Any bidder or contractor to the Commonwealth of Kentucky who, except for good cause shown, shall have committed, or failed to perform, as the context may require, one or more of the following acts or omissions, may be subject [shall be liable] to disciplinary action by the Finance and Administration Cabinet as set forth in Section 2 of this administrative regulation. Specific grounds for disciplinary action include:
(1) Failure to post bid or performance bonds, or to provide alternate bid or performance guarantee, or to submit a form acceptable to the purchasing agency in lieu of a bond, as required by [an invitation for bids or a solicitation for proposals];
(2) Substitution of commodities without the prior written approval of the purchasing agency;
(3) Failure to comply with the terms and conditions of a [an invitation for bids or solicitation for proposals] or [bid, the terms, conditions and specifications of a] contract, including failure to complete performance [of a contract] within the time specified in the contract;
(4) Failure to replace inferior or defective materials, supplies or equipment immediately after notification by the purchasing agency or the agency to which the materials, supplies or equipment have [has] been delivered;
(5) [Failure by a bidder listed on a bidder’s list to respond to three (3) of the five (5) for construction service contracts] violations for bids sent to the bidder;
(6) [Refusal to accept a contract awarded pursuant to the terms of a solicitation [an invitation for bids], or failing the close of competitive negotiations;]
(6) [Falsifying invoices, or making false representations to any state agency or [state] official, [or witness statements] about[,] any payment under a contract, or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor’s advantage;
(7) [Collusion] or collaboration with another bidder or other bidders in the submission of [a bid or] bids for the purpose of lessening or reducing competition;
(8) [Falsifying information in the submission of an application for listing on a Finance and Administration Cabinet bidders’ list.]
(9) [Failure to report, or to pay the Kentucky [and pay owed the] Revenue Cabinet any [Kentucky] sales [and/or] use taxes as may be due in connection with a procurement contract as provided by law;
(9) [Failure to comply with the prevailing wage law requirements of state or federal laws as may be applicable to any public works contract of the Commonwealth or any political subdivision or public authority.

Section 2. (1) Any contractor [preliminarily] determined to have committed [done] any act prohibited, or to have failed to perform [to] any act required by Section 1(1) to (5) [of] this administrative regulation may [shall], in the discretion of the commissioner of the department having jurisdiction over the procurement, [particular procurements subject to function, should be liable to] be placed on probation, or suspended from bidding to the Commonwealth of Kentucky, or a combination of suspension from bidding and probation, for not more than twelve (12) months.
(2) Any contractor [preliminarily] determined to have committed [done] any act prohibited by Section 1(6), (7), (8) [and/or (9)] of this administrative regulation may, in the discretion of the commissioner of the department having jurisdiction over the procurement, be placed on probation, or suspended from bidding to the Commonwealth of Kentucky, or a combination of suspension from bidding and probation, for not more than twenty-four (24) months. [shall be removed from the source lists and shall be ineligible for reinstatement]
ment to those lists for a period not to exceed twenty-four (24) months following the date of removal. Any contractor or subcontractor removed from the source list under this section shall be eligible to apply for reinstatement as provided in 200 KAR 5:304, after the expiration of the removal period.

(3) Any contractor, or any subcontractor to a contractor, determined by the Finance and Administration Cabinet to have violated the prevailing wage requirements of KRS Chapter 337 shall be suspended from bidding to the Commonwealth of Kentucky, or participating (to participate) in a public works contract of the Commonwealth of Kentucky, effective on [and after] the date the Finance and Administration Cabinet receives notice from the Labor Cabinet that the contractor or subcontractor has been determined to have violated the prevailing wage law, and until the Labor Cabinet has determined the contractor or subcontractor to be in compliance with the requirements of the law.

Section 3. Except for the grounds stated [mentioned] in Section 1(5) and (9) [(6) and (11)] of this administrative regulation, a preliminary written determination shall be made concerning the facts of any allegation or claim that a bidder or contractor has either committed an act prohibited, or failed to perform an act required, by Section 1 of this administrative regulation, before any disciplinary action is taken against the contractor. The preliminary determination shall be submitted to the General Counsel of the Finance and Administration Cabinet, for review prior to the administration of any disciplinary action as authorized by Section 2 of this administrative regulation. Notice of disciplinary action shall be sent to the bidder or contractor at the address shown in the cabinet's records by certified mail, return receipt requested.

Section 4. A bidder or contractor [bidders or contractors] against whom disciplinary action has been taken under this administrative regulation may appeal the action to the Secretary of the Finance and Administration Cabinet. The appeal shall [must] be filed in the office of the Secretary within ten (10) working days after the date of notice of the disciplinary action has been received by the bidder or contractor as shown by the certified mail receipt. The appeal shall [must] be in writing and shall [must] state facts showing cause why the disciplinary action should be set aside. An appeal constituting a general denial of the charges contained in the notice of disciplinary action, unless supported by specific facts rebutting the charges, shall be deemed to have been inadvertently dismissed. The appellant may request either a formal hearing pursuant to KRS Chapter 13B [before a hearing officer to be designated by the Secretary to take such action as the secretary deems advisable and make findings and recommendations to the secretary], or an informal hearing to be conducted by the commissioner of the department having jurisdiction over the particular procurement activity or function, or his designee. A written report of the substance of the matters raised in an [the] informal hearing shall be prepared and submitted to the secretary (as) recommending that the appeal be sustained or denied. The rules of evidence shall not apply in [either formal or informal hearings conducted under this section and any matter considered pertinent to the issues of the hearing shall be admissible, subject only to the determination by the presiding officer as to the proper weight to be accorded all matters introduced at the hearing].

Section 5. No purchase [of any kind] shall be made by any state agency from a bidder or contractor who has been suspended from bidding [or removed from the source list, except for those removed for the grounds stated in Section 1(5) of this administrative regulation]. All state agencies shall be promptly informed about bidders or contractors suspended from bidding [or removed from the source list and shall immediately comply with this prohibition].

Section 6. The administration of disciplinary action against a bidder, potential bidder or contractor under this administrative regulation shall not preclude the taking of other action by the Commonwealth, based on the same facts, as may be otherwise available, either at law or in equity, including [without limitation to the generally available], suits for damages or actions for specific performance.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003

FILED WITH LRC: August 7, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Angola Administration, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (602) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates the policies and procedures for disciplinary actions that may be taken against bidders to and contractors awarded state contracts.
(b) The necessity of this administrative regulation: This administrative regulation promulgates the standards of disciplinary actions that implement KRS 45A.035(2)(b).
(c) How this administrative regulation conforms to the content of the authorizing statutes: The finance and Administration Cabinet is permitted by KRS 45A.035 to promulgate administrative regulations governing disciplinary actions that may be taken against vendors.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the conditions and types of disciplinary actions that may be taken against vendors.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation correct typographical errors, update terms used in the state's procurement system, and delete references to the source list that is no longer used and correct language to conform to KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment provides state agencies and vendor with updated information and guidance that comply with Finance and Administration Cabinet policies and the Management Administrative Reporting System (MARS).
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact all state agencies, vendors submitting bids for solicitations, and contractors awarded state procurement contracts.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.
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(7) Provide an assessment of whether an 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

(9) TIERING: Is tiering applied? Tiering is not applied. The administrative regulation involves disciplinary actions that may be taken against any vendor, regardless of the characteristics of the vendor, when the requirements of the administrative regulation are met and it is in the best interest of the Commonwealth.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.215
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is required by KRS 45A.215 to promulgate administrative regulations setting forth cost principles to be used as guidelines, inter alia, to determine allowable costs incurred by contractors under cost reimbursement type contracts, if [where] estimated or incurred costs of performing contracts have to be determined; and in the negotiation of contracts not subject to competitive bidding, if [where] changes or modifications to contracts are directed or for the settlement of contracts that have been terminated. This administrative regulation sets forth the cost principles to be employed for [for the aforementioned purpose, or when it may otherwise be necessary or convenient] to determine a contractor's costs. This amendment corrects a reference to federal cost principles, adds [These amendments add and delete additional] references to OMB Circulars, and deletes references to state administrative regulations governing cost reimbursement contracts and [administered by] the Cabinet for Human Resources.

The amendment also brings the administrative regulation into compliance with KRS Chapter 13A. These amendments also delete the requirement that the various federal laws cited be incorporated by reference or adopted as an administrative regulation.

Section 1. Cost reimbursement contracts shall conform to the cost principles set forth in 48 C.F.R. Part 31, Contract Cost Principles and Procedures; Office of Management and Budget Circulars A-21, A-87, A-122, or others, as applicable, [Chapter 1, Subparts 1, 15, 101 to 15, 219, 8, inclusive, and in Subparts 3, 13, 800 to 3, 814, 3, inclusive, of Title 41 C.F.R., Public Contracts and Property Management revised as of July 1, 1980.]

Section 2. (1) Cost reimbursement contracts provided under Title 45 C.F.R., Public Welfare, shall be governed by the requirements of the Community Services and "Social Services Block Grant Fund as authorized by" the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, in accordance with applicable administrative requirements and cost principles specified in Title 45 C.F.R., Part 74, Administration of Grants, and Office of Management and Budget Circulars A-21, A-87, A-122, or others, as applicable, dated as of June 30, 1981, Office of Management and Budget Circulars A-21, A-87 or A-122, as applicable, 950 KAR Chapter 3, 000 KAR 1,008 and subsequent changes: 95 KAR 6,000 and subsequent changes, applicable to community services block grant only]; Federal interpretation of cost principle [said] requirements may be used as a guide in the Commonwealth's [state] determination of the applicability of the various subparts and appendices of 45 C.F.R. Parts [Part] 74, 92 and 95, as applicable...

(2) The Commonwealth [state] shall not be required to secure any approvals from the federal granting authority as specified in 45 C.F.R. Part 74 unless it is specifically required by the Omnibus Reconciliation Act of 1981, Individual Block Grants, or by changes hereinafter enacted in federal law or regulations. The Commonwealth [state] shall not apply any part of 45 C.F.R. Part 74 which it determines not to be in the best interest of the Commonwealth. [All references to the term "federal granting agency" or similar reference in 45 C.F.R. Part 74 shall be construed to mean the Cabinet for Human Resources; and the term "grantees" and "subgrantees" shall be construed to mean contractors and subcontractors of the Cabinet for Human Resources, including other state agencies receiving community services or social services block grants.]

The provisions of this other administrative regulation notwithstanding, the exclusive method of determining allowable costs incurred by contractors under cost reimbursement type contracts entered into under community services and social services block grants shall be as provided in this section.

Section 3. The cost principles referenced in this administrative regulation may be used as guidelines in the negotiation of estimated costs or fixed prices if [when] the use of competitive sealed bidding is precluded by the absence of open market competition, for changes or modifications in contracts directed by the Commonwealth [state], for determining the allowable of incurred costs under cost reimbursement contracts entered into pursuant to KRS 45A.130; for the settlement of contracts that have been terminated; and in other cases where the determination of the estimated or the incurred costs of performing contracts may be required.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in hearing at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed amendment at the public hearing. A 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 October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.215.
(b) The necessity of this administrative regulation: This administrative regulation sets out the requirements and procedures for cost principles used to estimate costs or fixed prices when competitive bidding cannot be used; for adjustments for state-directed changes or modifications in contract performance; and settlements of terminated contracts.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.215 to promulgate administrative regulations governing cost principles.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all state agencies and contractors of the cost principles under which allowable costs are to be determined.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment will change references to the current federal standards for cost principles. The amendment also...
brings the administrative regulation into compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Updated policies and procedures are needed to provide guidance for state agencies on how to determine allowable costs incurred by contractors and when such cost principles apply.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies, and all individuals, firms, organizations and political subdivisions doing business with the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact.

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

(a) Initially: $0
(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(9) TIERING: Is tiering applied? No, all state agencies are required to adhere to the cost principles in the same manner.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:325 Consideration to be given to use of Kentucky-made wood products.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035, 45A.045(2)
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.045 to promulgate administrative regulations governing purchases. This administrative regulation provides for consistent consideration of the use of Kentucky-made wood products in government purchases. This administrative regulation deletes references to source application and the Vendor Information Program, which have been replaced by the state's procurement system. The amendment also references the Kentucky Wood Products Mall website, which contains a listing of wood products and manufacturers. [This administrative regulation is necessary because the historic purchasing practices of state agencies do not provide consistent consideration of the use of Kentucky-made wood products.]

Section 1. [The Finance and Administration Cabinet shall develop a list, by commodity item, of Kentucky manufacturers who produce wood products, including furniture, crafts, gift shop items, construction materials, and other minor office furnishings, such as mail boxes, that are sold by government bodies. In developing this list, the cabinet may consult with the Cabinet for Economic Development, the Tourism Cabinet, and the Kentucky Wood Products Competitiveness Corporation. The cabinet may utilize its current "source application" or Vendor Information Program electronic registration system to produce this list, which may be incorporated into the master source list maintained by the Division of Purchases and the Division of Contracting and Administration.]

Section 2. [Commonwealth agencies requesting the purchase of wood products shall review specifications for those procurements to:

(1) Assure that specifications do not preclude the use of Kentucky-made wood products without full written justification included in the purchase request for the wood products.

(2) Consider the use of generic specifications that [which] describe functional and performance requirements to which responsible Kentucky wood products manufacturers could be responsive.

(3) Assume that "brand name or approved equal" specifications are used only after it has been determined that functional and performance-based specifications cannot reasonably be prepared.

Section 2. [The Finance and Administration Cabinet may review the specifications for wood product procurement requests and may permit the Kentucky Wood Products Competitiveness Corporation, and other governmental entities whose interests include providing business opportunities to Kentucky wood products manufacturers, to review the specifications.

Section 3. Every purchasing agency of the Commonwealth shall review the listing of Kentucky manufacturers and commodities in the Kentucky Wood Products Mall website, which is maintained by the Kentucky Wood Products Competitiveness Corporation, if soliciting bids for wood products. Specifications for wood products shall be posted on the Commonwealth's electronic procurement website. A state agency shall consider Kentucky-made wood products on master agreements if purchasing from the electronic catalog in the state's procurement system. Developed pursuant to Section 1 of this administrative regulation when requesting bids for wood products. Potential bidders included on this list shall be among those to whom bid invitations are transmitted or to whom bid invitations are made available.]

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.045 and provide for consistent consideration of the use of Kentucky-made wood products by state agencies.

(b) The necessity of this administrative regulation: This administrative regulation provides for consistent consideration of the use of Kentucky-made wood products by state agencies, in accordance with KRS 154.47.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is permitted by KRS 45A.045 to promulgate administrative regulations and shall have supervision over all purchases by the various purchasing agencies. This administrative regulation provides for consideration of Kentucky-made products by state agencies purchasing

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wood products.
(d) How this administrative regulation currently assists or will assist the effective administration of the statutes: This administrative regulation informs all state agencies that they should consider purchasing Kentucky-made wood products and that solicitations for wood products must be posted on the Commonwealth's eProcurement website.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment will delete references to source apportionment and the Vendor Information Program, which have been replaced by the Management Administrative Reporting System (MARS). The amendment will add a requirement that solicitations for wood products must be posted on the Commonwealth's eProcurement website. Also, the amendment references the Kentucky Wood Products Mall website, a listing of wood products and manufacturers.
(b) The necessity of the amendment to this administrative regulation: The amendment will provide agencies with updated policies and procedures for guidance when purchasing wood products.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact. Solicitations prepared in MARS are automatically posted to the Commonwealth's eProcurement site.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(9) TIERING: Is tiering applied? No, all state agencies are required to consider Kentucky-made wood products when purchasing wood products.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:330. Purchase of goods, supplies, equipment, materials and printing with minimum recycled content.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.520
NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.520 to promulgate administrative regulations to establish mandates that every state agency, when purchasing goods, supplies, equipment, materials and printing, shall [as] require a minimum recycled material content for those goods, supplies, equipment, materials for goods and printing which it purchases. The recycled material content for these goods, supplies, equipment, materials and printing shall [is -ic] be established by administrative regulation promulgated by the Finance and Administration Cabinet. KRS 45A.520 further provides that if the United States Environmental Protection Agency has established a minimum recycled content for certain products, then the Finance and Administration Cabinet shall adopt at a minimum, those standards established by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended. This administrative regulation further implements the provisions of KRS 45A.525 and 45A.530. The amendment to this administrative regulation updates the minimum recycled content for some products in conformity to United States Environmental Protection Agency standards and corrects typographical errors.

Section 1. Definitions. As used in this administrative regulation, unless the context indicates otherwise:
1. "Recovered fly ash" means the component of coal which results from the combustion of coal, and is the finely divided mineral residue which is typically collected from boiler stack gases by electrostatic precipitator or mechanical collection devices.
2. "Mill broke" means any paper generated in a paper mill prior to completion of the paper manufacturing process which is unsuitable for end use applications and is subsequently reused in the paper manufacturing process.
3. "Postconsumer waste" means products or materials which have been discarded by a consumer.
4. "Recovered material" means those materials which have been separated, diverted or removed from the solid waste stream after a manufacturing process.
5. "Recovered paper material" means paper products and paper byproducts which, if not recovered, would otherwise be solid waste, and which are intended for sale, use, reuse, or recycling, whether such materials or byproducts require subsequent separation and processing, excluding the virgin content of mill broke and sawdust.
6. "R-refined oil" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.
7. "Solid waste stream" means a path of discarded material from point of origin to ultimate disposition.
8. "State agency" as used in this administrative regulation, shall have the same definition as that provided in KRS 45A.505.

Section 2. Minimum Recycled Content for State Agency Purchases. Except as provided under KRS 45A.510, any goods, supplies, equipment, materials and printing purchased by a state agency shall contain the following minimum recycled content:
(1) Paper:
1. Xerographic paper [all sizes and colors] shall contain fifty (50) percent recycled paper material of which ten (10) percent shall be postconsumer waste.
2. Carbonless printing paper [all sizes and colors] shall contain thirty (30) [ten (10)] percent recycled paper material.
3. Flat sheet printing papers.
4. Paper, offset and opaque [all sizes and colors] shall contain fifty (50) percent recycled paper material of which ten (10) percent shall be postconsumer waste.
5. Paper, text [all sizes and colors] shall contain fifty (50) percent recycled paper material of which ten (10) percent shall be postconsumer waste.
6. Paper, parchtex [all sizes and colors] shall contain fifty (50) percent recycled paper material of which fifteen (15) percent shall be postconsumer waste.
7. Paper, cover, antique or vellum or text [all sizes and colors] shall contain fifty (50) percent recycled paper material of which ten (10) percent shall be postconsumer waste.
8. Paper, index [all sizes and colors] shall contain fifty (50) percent recycled paper material of which twenty (20) [ten (10)] percent shall be postconsumer waste.
(2) Business papers.
1. Paper, mimeographic [all sizes and colors] shall contain fifty (50) percent recycled paper material of which ten (10) percent shall be postconsumer waste.
2. Paper, spirit process [all sizes and colors] shall contain fifty (50) percent recycled paper material of which ten (10) percent shall be postconsumer waste.
contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

[1(c)] Paper, rag bond (all sizes)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

[1(d)] Paper, sulfite bond (all sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

[1(e)] Computer paper.

[2(a)] Continuous stock paper, carbon interleaved (all sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.

[2(b)] Continuous stock paper, plain (all sizes and colors) shall have [Product] must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

[2(c)] Miscellaneous office supplies.

(a) Blotters, desk (all sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(b) Calendars (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(c) File pockets (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(d) Notebooks (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(e) Angled heavy celluloid tab folder (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) ten (10) percent shall be postconsumer waste.

(f) File folder (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) ten (10) percent shall be postconsumer waste.

(g) Hanging folder (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) ten (10) percent shall be postconsumer waste.

(h) Open shelf file folder (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) ten (10) percent shall be postconsumer waste.

(i) Top tab folder (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) ten (10) percent shall be postconsumer waste.

(j) Two (2) inch expansion bottom gusset (gusset) folder (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) ten (10) percent shall be postconsumer waste.

(k) Twenty-five (25) point classification folder (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) ten (10) percent shall be postconsumer waste.

(l) Guides, index monthly (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(m) Indexes, alphabetical (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which twenty (20) ten (10) percent shall be postconsumer waste.

(n) Mailing tubes (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(o) Memo books (all types, sizes and colors) shall have [Product] must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(p) Memo case (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.

(q) Memo sheets (all types, sizes and colors)[Product] must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(r) Notebooks, three (3) hole punched (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(s) Notebooks, stenographic (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(i) Fan folded notes (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(j) Columnar green pads (all types and sizes)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(k) Desk pads (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(l) Scratch pads (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer material.

(x) Adding machine paper (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(y) Tablets (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(z) Tags, shipping (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(aa) Wallet, elastic cord (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(bb) Wallet, expanding, string tie (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(cc) Legal pads, legal (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(dd) Telephone message pads (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(e) Toilet tissue[Product] shall contain fifty (50) percent recovered paper material of which twenty (20) percent shall be postconsumer waste.

(f) Paper towels[Product] shall contain fifty (50) percent recovered paper material of which forty (40) percent shall be postconsumer waste.

(g) Napkins[Product] shall contain fifty (50) percent recovered paper material of which thirty (30) percent shall be postconsumer waste.

(h) Industrial wipes[Product] shall contain fifty (50) percent recovered paper material of which forty (40) twenty (20) percent shall be postconsumer waste.

(i) Building insulation.

(j) Cellulose loose-fill and spray-on.[Product] shall contain seventy-five (75) percent postconsumer waste.

(k) Product shall contain Petite composite board twenty-three (23) percent postconsumer waste.

(l) Plastic rigid foam.

(a) Polyisocyanurate/polyurethane[Product] shall contain the following:

a. Rigid foam: nine (9) percent recovered material.
b. Foam-in-place: five (5) percent recovered material.
c. Glass fiber reinforced (5) percent recovered material.
d. Phenolic rigid foam[Product] shall contain five (5) percent recovered material.

(e) Rock wool[Product] shall contain seventy-five (75) fifty (50) percent recovered material.

(f) Engine lubricating oils[Product] shall contain twenty-five (25) percent re-refined oil.

(g) Hydraulic fluid[Product] shall contain twenty-five (25) percent re-refined oil.

(h) Gear oils[Product] shall contain twenty-five (25) percent re-refined oil.

(i) Plastic sign blanks[Product] shall contain 100 percent postconsumer waste.

(j) Envelopes (all types, sizes and colors)[Product] shall contain fifty (50) percent recovered material.

(k) Dolly sheets (all types, sizes and colors)[Product] shall contain fifty (50) percent postconsumer waste.
monwealth, fifty (50) percent or more of the cost of which is financed with the proceeds of bonds issued by the agency, be undertaken with goods, supplies, equipment, materials and printing which meet the requirements for minimum recycled material content established in Section 2 of this administrative regulation.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on September 25, 2003, at 10 a.m. in Room 383, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-8875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.520.
(b) The necessity of this administrative regulation: This administrative regulation promulgates policies and procedures that every state agency shall require a minimum recycled material content for goods, supplies, equipment, materials and printing which it purchases, based on standards set by this policy in accordance with the United States Environmental Protection Agency.
(c) How this administrative regulation conforms to the content of the authorizing statute: The Finance and Administration Cabinet is required by KRS 45A.520 to promulgate administrative regulation establishing the minimum recycled content of items purchased. This administrative regulation lists the content of items purchased by state agencies.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all state agencies that they should consider and adhere to the minimum recycled content requirements for purchases.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment updates the minimum recycled content for some products to conform to United States Environmental Protection Agency standards and corrects typographical errors.
(b) The necessity of the amendment to this administrative regulation: The amendment will provide agencies with updated recycled content requirements.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies. It will notify vendors of the minimum recycled content of items that state agencies may purchase.
(4) Provide an assessment of how the above group or groups

Section 3. State Agency Contracts for Construction, Repair, Renovation, and Demolition of Public Facilities and Improvements to Public Real Properties. Every state agency shall require, to the extent practicable, that every project within the Com-
will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in 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.
(9) TIERING: Is tiering applied: No, all state agencies are required to consider the recycled content of items they purchase.

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
(Amendment)

201 KAR 18:040. Fees.

RELATES TO: KRS 322.060, 322.090, 322.100, 322.110, 322.120, 322.160, 322.170

STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.110, 322.120, 322.290(4)

NECESSITY, PROOF, AND CONFORMITY: KRS 322.100 gives the board the authority to set license fees. This administrative regulation establishes fees for application, examination, certification, issuance, reinstatement and renewal fees.

Section 1. Examination Fees. The fees for taking the Principles and Practice of Engineering Examination, the Principles and Practice of Land Surveying Examination, the Fundamentals of Engineering Examination, the Fundamentals of Land Surveying Examination, and the Structural II Examination shall be the amounts charged from time to time by the National Council of Examiners for Engineering and Surveying. [Application and Licensee Fees. (1)(a)]

The total fee for licensure as a professional engineer or professional land surveyor by examination shall be $250.
(b) Fifty ($50) dollars of this fee shall accompany the application for examination for licensure.
(c) The fee for examination for licensure as a professional engineer or professional land surveyor shall be $200. The fee for examination as a professional engineer in Structural II shall be $500.

(2) The fee for licensure by reciprocity as a professional engineer or professional land surveyor shall be $300. This fee shall accompany the application for licensure.

(3) The initial application fee for examination as an engineer in training or land surveyor in training shall be ten ($10) dollars and shall include the examination. An applicant who does not pass the examination and applies for a subsequent examination shall pay a fee as follows: $140 for an engineer in training and $125 for a land surveyor in training.

Section 2. Initial Licensure, Reciprocity, Renewal, Reissuance, and Verification Fees. (1) Verification of licensure is ten ($10) dollars.

(2) Renewal of an individual license is $150. Licensees whose surnames begin with the letters A through K shall renew in odd-numbered years. Licensees whose surnames begin with the letters L through Z shall renew in even-numbered years.

(3) The fee for reinstatement of an expired license or business entity permit that has been expired for less than one (1) year shall be calculated as provided by KRS 322.160(3). If the license or business entity permit has been expired for more than one (1) year, the former licensee or business entity shall file an application for reinstatement and pay a fee of $500.

(4) Reissuance of a license after loss or destruction is twenty-five ($25) dollars.

(5) The fee for licensure by reciprocity as a professional engineer or professional land surveyor shall be $300. The fee shall accompany the application for licensure.

(6) Applicants whose surnames begin with the letters A through K who are initially licensed in even-numbered years are not charged an initial license fee; if they are initially licensed in odd-numbered years, the initial license fee shall be seventy-five ($75) dollars. Applicants whose surnames begin with the letters L through Z who are initially licensed in odd-numbered years are not charged an initial license fee; if they are initially licensed in even-numbered years, the initial fee shall be seventy-five ($75) dollars.

(7) Applicants who fail the two (2) hour state specific examination on the first attempt shall be charged fifty ($50) dollars for each subsequent attempt.

Section 3. Fees for Examination and Licensure in Additional Disciplines. (1) After initial licensure, a licensee may apply for examination in one (1) or more disciplines of engineering for which he has not been licensed.

(2) For each discipline of engineering he shall submit an:
(a) Updated application; and
(b) Examination fee as specified in this administrative regulation.

(3) Upon successful completion of an examination, he shall submit ten ($10) dollars for each addition of a new discipline.

Section 4. Business Entities. The fee for a permit to practice engineering or land surveying in this state shall be $100 for either permit. A business entity which applies for a dual permit shall submit $150. These fees shall accompany the application. The annual renewal fee for an individual permit shall be $100. The annual renewal fee for a dual permit shall be $150.

Section 5. Payment of Fees. (1) Fees payable under Section 2 of this administrative regulation shall be paid by check or money order made payable to "Kentucky Board of Licensure". Fees payable under Section 1 of this amended administrative regulation shall be paid to the examiner as directed by the board.

(2) All fees are nonrefundable. [An examination fee shall be transmitted in sufficient time to be received by the board at least two (2) weeks prior to the examination.]

Section 6. Forms. (1) The following forms are incorporated by reference:
(a) "Application for Licensure to Practice Professional Engineering (1999)";
(b) "Application for Licensure to Practice Professional Land Surveying (2000)";
(c) "Professional Reference Form (2000)"; and
(d) "Report of Professional Experience (2000)".

(2) These forms may be obtained, inspected, or copied, subject to applicable copyright law, at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, or by downloading from the board's web page at http://kyboels.state.ky.us.

DAVID H. DUMMER, Pub.L.S., Chairman
APPROVED BY AGENCY: July 29, 2003
FILED WITH LRC: July 29, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2003, at 10 a.m., local time, at the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2003, 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 as a public hearing, you may submit written comments on the proposed administrative regulation. Written comment shall be accepted until 4:30 p.m., local time, on October 1, 2003. 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: B. David Cox, Executive Director, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2021, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. David Cox, Executive Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes fees for the licensing and renewal of licenses for professional engineers and land surveyors.
   (b) The necessity of this administrative regulation: The promulgating agency regulates the practice of engineering and land surveying in this Commonwealth and is funded strictly through licensing fees.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes fees for the licensing of engineers and land surveyors as set out in KRS 322.100, 322.120, 322.170 and 322.290.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes and regulates the fees charged by the promulgating agency for performing its services, and will simplify the collection of fees for examinations. It will also clarify for licensees the provisions for renewal of licenses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change the existing administrative regulation: The amendment eliminates the application fee charged by the promulgating agency, and provides that the fees for taking the licensing examinations will be paid directly to the examiner rather than to the agency. It also clarifies the provisions concerning the time for renewal of existing licenses.
   (b) The necessity of the amendment to this administrative regulation: Previously, the promulgating agency purchased examinations from the NCEES, charged the applicants the price of the examinations and paid over that amount to the NCEES. Because of the periodic increase in the cost of the examinations and the length of time needed for amending this regulation to account for increased costs, the regulation has provided, through an application fee, a buffer to cover the costs until the regulation could be amended. This amendment will eliminate the necessity of amending the regulation every time the price of examinations increases, insures that applicants for licensure will pay the actual cost of the examinations and will insure that renewal fees for existing licenses will not be used to subsidize the costs of examinations for new applications.
   (c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes direct the promulgating agency to set fees by administrative regulation.

(3) How the amendment will assist in the effective administration of the statutes:
   (1) It will eliminate the possibility of an applicant for licensure paying more than the actual cost of an examination;
   (2) It will eliminate the need for the promulgating agency to amend this administrative regulation each time the price of examinations is increased by the NCEES.

(4) List the type and number of individuals, businesses, organizations, affected by this administrative regulation: The amendments to this administrative regulation will apply to approximately 300 individuals who apply for initial licensure each year, and approximately 8,000 professional engineers and professional land surveyors who renew their licenses each year.

(5) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: No adverse impact is anticipated. Applicants for initial licensure will pay only the actual cost of the examinations and existing licensees will not have to subsidize the cost of examinations for new applications.

(6) Provide an estimate of how much it will cost to implement this administrative regulation:
    (a) Initially: There is no cost associated with the implementation of this administrative regulation.
    (b) On a continuing basis: There will be no continuing costs associated with the implementation of this administrative regulation.

(7) What is the source of the funding to be used for the enforcement of this administrative regulation: The agency receives its funding through the license fees of professional engineers and professional land surveyors, but no funds are necessary for the enforcement of this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will neither establish new fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all professional engineers and professional land surveyors licensed by the board and all individuals applying for initial licensure.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

301 KAR 2:081. Transportation and holding of native wildlife [Pot and propagation permits].

RELATES TO: KRS 150.015, 150.180, 150.280, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.420
STATUTORY AUTHORITY: KRS 150.025, 150.180, 150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for regulating the propagation and holding of protected wildlife. This administrative regulation is necessary to control the indiscriminate possession of wildlife and to insure that wildlife is humanely and properly cared for, [a] to protect the public and native wildlife from wildlife borne diseases, and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.

Section 1. Definitions. (1) "Albinistic" means an animal lacking brown or black pigment.
(2) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals, but shall not include a show including wrestling bears or other direct contact between members of the public and inherently dangerous animals.
(3) "Leucistic" means a predominantly white animal.
(4) "Native wildlife" means wildlife which have historically existed or currently exist in the wild in Kentucky without introduction by man, not including naturalized introduced species such as starlings, house sparrows and Eurasian collared doves.
(5) "Xanthic" means a predominantly yellow animal.

Section 2. (1) Except as specified in subsection (2) of this section, a person shall not import or possess:
   (a) Alligator snapping turtle (Macroclemys temminckii);
   (b) Black bear (Ursus americanus);
   (c) Copperbelly water snake (Nerodia erythrogaster neglecta);
   (d) Cougar or mountain lion (Felis concolor);
   (e) Any federally threatened or endangered species;
   (f) Wild turkey (Meleagris gallopavo); or
   (g) Wolf (Canis lupus) or wolf-hybrids. Wolf-hybrids in possession prior to the effective date of this administrative regulation may be retained.

(2) The commissioner may allow the importation or possession of the species listed in subsection (1) of this section by circuses or for legitimate scientific or educational purposes by:
   (e) A zoo that is:
      1. A member of the American Zoo and Aquarium Association; or
2. Designated as the official zoo of a municipality.
   (a) A government agency;
   (b) A college or university; or
   (c) A similar educational or research institution.

Section 3. Taking and Possessing Wildlife. (1) A person shall
not hold wildlife in captivity that was not legally taken or possessed.
(2) Except as specified in subsection (6) of this section, a person
holding native wildlife in captivity shall apply for and obtain a permit
prior to acquiring the wildlife.
(3) A person permitted to rehabilitate wildlife as specified in 301
KAR 2:075 shall not be issued a commercial or noncommercial cap-
vitive wildlife permit.
(4) Commercial captive wildlife permit.
   (a) A commercial captive wildlife permit shall be required for
persons wishing to sell, offer to sell, trade, or barter native wildlife. A
person shall not sell, offer to sell, trade, or barter native wildlife or
parts thereof, obtained from the wild.
   (b) A commercial captive wildlife permit shall be renewable an-
ually from the date of issue.
   (c) The commercial captive wildlife permit fee shall be $100 a
year.
(5) Noncommercial captive wildlife permits.
   (a) A noncommercial captive wildlife permit is required for
persons wishing to possess native wildlife, but do not intend to sell, offer
for sale, trade or barter animals.
   (b) A noncommercial captive wildlife permit fee shall be seventy-
five (75) dollars and be renewable three (3) years from date of issue.
   (c) Amphibians and reptiles.
   (d) Except as provided for in Section 2(1) of this administrative
regulation, captive wildlife permits are not required for persons tak-
ing or possessing up to five (5) individuals of each species of a na-
tive reptile or amphibian.
   (b) There shall not be a limit on the number of individuals of
each species a commercial or noncommercial captive wildlife permit
holder may possess, provided the permit holder does not take more
than five (5) individuals of each species of amphibians or reptile
from the wild.
   (c) A captive wildlife permit shall not be required to hold reptiles
with a color morphology that is albinitic, leucistic or xanthic.
   (d) All commercial and noncommercial captive wildlife permit
holders keeping native amphibians and reptiles shall retain:
   1. A certificate of origin;
   2. A bill of sale;
   3. Receipted invoice; or
   4. Other evidence of lawful acquisition of each individual of any
taxa captive propagated or legally obtained from out of state.
   (e) Accurate records for animals, including wild-caught, shall
be maintained for five (5) years by the permit holder and be available
for inspection by a department representative at a reasonable
hour. Records shall include:
   1. Common and scientific names;
   2. Number of reptiles or amphibians received or sold;
   3. Birth dates of captive born animals;
   4. Date, location and length of all wild capture taxa; and
   5. Date of all transactions including the complete name, address
and phone number of the person from whom an animal was pur-
chased, including the seller's permit number, or to whom the animal
was sold, traded, bartered, or given as a gift.
   (f) Transportation permits and certificate of veterinary inspec-
tion.
   (a) Prior to entry into Kentucky, a transportation permit shall be
obtained for all shipments of wildlife. Persons shall be responsible
for applying for a transportation permit if he or she:
   1. Receives a shipment of wildlife;
   2. Imports wildlife for his or her own use or possession; or
   3. Transports wildlife into and through the state to a designation
outside Kentucky.
   (b) A copy of a valid transportation permit shall accompany all
shipments of wildlife into Kentucky.
   (c) Individual transportation permits shall be valid for one (1)
shipment of wildlife.
   (d) Annual transportation permits shall be valid for multiple wild-
life shipments for one (1) year from the date of issue. Annual trans-
portation permit holders shall:
   1. Notify the department in writing of any changes or additions
subsequent to the original application so that the permit may be
amended prior to future wildlife importation; and
   2. Notify the department by telephone Monday through Friday
between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior
to each shipment of wildlife of the date of expected shipment, source of
the shipment and the species and number being shipped.
   (e) All shipments of wildlife shall be accompanied by a certificate
of veterinary inspection stating that the wildlife is free of symptoms of
disease. A federal quarantine certificate may be substituted for
the certificate of veterinarian inspection.
   (f) Fees.
   1. The individual transportation permit fee shall be twenty-five
(25) dollars.
   2. The annual transportation permit fee shall be $250.

Section 4. Applying for Permits. (1) Applicants for captive wildlife
and transportation permits shall be made on standard forms.
(2) The applicant shall indicate the source of supply of the wild-
life.
(3) After the permit is issued, the permit holder shall retain a bill
of sale or other written proof to show that the wildlife was obtained
from a legal source.
(4) A permit holder shall show this written proof to a conserva-
tion officer upon request.
(5) Applicants shall construct holding facilities that meet or ex-
cede the enclosure specifications established in Section 7 of this
administrative regulation for each listed species to be acquired be-
fore submitting the captive wildlife application.
(6) Applicants shall possess an approved permit before acquiring
animals.
(7) Failure to provide accurate, truthful and complete informa-
tion on the application form shall result in:
   (a) Immediate withdrawal or revocation of the permit; and
   (b) Confiscation of the wildlife imported under the permit.

Section 5. Confining Facilities. (1) Cages, pens, or other enclo-
sures for confining native wildlife shall be of sufficient structural
strength to:
   (a) Prevent the escape of the captive animals;
   (b) Protect the caged animal from injury and predators; and
   (c) Prevent the entrance of free individuals of the same species.
   (2) Wing-clipped and pinioned birds may be kept in suitable
unroofed enclosures even though wild birds of the same species
may enter the enclosure.
(3) A person shall not maintain any native wildlife in captivity in
an unsanitary or unsafe condition or in a manner that results in the
malnourishment or neglect of such wildlife.
(4) Native wildlife shall not be confined in any cage or enclosure
that does not meet the cage specifications in Section 7 of this ad-
ministrative regulation.
(5) Cages and enclosures in which wildlife is held in captivity
shall be maintained as follows:
   (a) Clean running water shall be provided daily in clean contain-
ers.
   (b) Swimming or wading pools shall be cleaned as needed to
ensure good water quality.
   (c) Enclosures shall provide adequate drainage of surface water;
   (d) Captive mammals and birds shall be fed daily;
   (e) Food shall be of a type and quantity that meets the nutritional
requirements for the particular species and shall be provided in an
unspoiled and uncontaminated condition;
   (f) Feeding containers shall be kept clean, and uneaten food
removed within a reasonable time;
   (g) A shelter shall be provided for security and protection from
inclement weather;
   (h) Shade or an overhead structure shall be provided in warm
seasons;
   (i) Fecal and food wastes shall be removed from cages daily and
stored or disposed of in a manner that prevents noxious odors or
insect pests;
   (j) Cage and enclosures shall be ventilated to prevent noxious
odors;
(k) Hard floors within cages or enclosures shall be cleaned a minimum of once weekly;

(i) Cages or enclosures with dirt floors shall be raked a minimum of once every three days and the waste removed;

(m) Animals that are compatible with one (1) another may be held in the same enclosure if the required floor space is provided; and

(n) Common walls shall be constructed between animals that are not compatible so the animals cannot interact.

Section 6. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities. (1) Birds.

(a) Bobwhite quail older than fourteen (14) weeks shall be held in an enclosure with the following minimum specifications:

1. A single bobwhite quail enclosure shall be a minimum of 100 square feet.
2. There shall be an increase in one (1) square foot per additional bobwhite quail.
3. Bobwhite quail may be held in smaller breeding pens during the breeding season.

(b) Ducks shall be held in an enclosure with the following minimum specifications:

1. There shall be no more than two (2) pairs or one (1) pair and their offspring confined to an area smaller than 100 square feet;
2. There shall be at least ten (10) square feet of water that is one (1) foot or greater in depth; and
3. There shall be at least twenty (20) square feet of additional land space and five (5) square feet of water surface for each additional adult duck.

(c) Geese shall be held in an enclosure with the following minimum specifications:

1. There shall be no more than two (2) pair or one (1) pair and their offspring confined to an area smaller than 500 square feet;
2. There shall be a minimum of Fifty (50) square feet of water that is two (2) feet or greater in depth; and
3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) Ruffed grouse shall be held in an enclosure with the following minimum specifications:

1. 200 square feet of floor space for five (5) or fewer birds with a height of at least six (6) feet; and
2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(2) Mammals.

(a) Bats shall be kept in an enclosure with the following minimum specifications:

1. Little brown, long-eared and pipistrelles shall be kept in an enclosure that is at least 6 ft. x 12 ft. x 6 ft.
2. Evening and red bats shall be kept in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

(b) Big brown and hoary bats shall be kept in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(c) Foxes, bobcats and raccoons shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width; and
2. There shall be thirty (30) square feet floor space for each additional animal.

(d) Coyotes shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width; and
2. There shall be twenty-five (25) square feet floor space for each additional animal.

(e) Beaver and otter shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;
2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal;
3. Otters shall have a slide and a dry place for sleeping and retreat; and
4. Beavers shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(f) Muskrat and mink shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;
2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and
3. Muskrats shall have gnawing material.

(g) Gray squirrels and fox squirrels shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and
2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(h) Skunk, opossum, rabbit and woodchuck shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;
2. There shall be an increase in floor space by four (4) square feet for each additional animal; and
3. Woodchucks shall have several gnawing logs approximately six (6) inches in diameter.

(i) Weasel shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and
2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 7. Mobile Facilities. Mobile facilities used in transporting wildlife shall comply with the following requirements:

(1) Facilities shall be equipped to provide for air without injurious drafts and adequate protection from the elements;

(2) The animal housing area shall be free of engine exhaust fumes;

(3) Cages shall be large enough to ensure that each specimen has sufficient room to stand erect and lay naturally;

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation; and

(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 8. Temporary Facilities. Native wildlife housed in temporary facilities or exhibits shall be housed in cages that meet the minimum cage specifications as provided in the section on stationary facilities when wildlife are present in any geographical location for more than ten (10) days.

Section 9. Inspections. (1) The holder of a captive wildlife permit shall allow a conservation officer to inspect the facilities at any reasonable time.

(2) The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is being kept in unsanitary or inhumane conditions.

(3) The captive wildlife permit shall be revoked and all captive wildlife confiscated if the unsatisfactory conditions are not corrected within ten (10) days of the initial inspection.

(4) The captive wildlife permit shall be revoked and all captive wildlife confiscated if the application was not made in good faith or if the permit holder is convicted on any law violation concerning the species for which he holds the permits.

(5) Fees shall not be refunded for permits that are revoked.

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

(a) "The Commercial and Noncommercial Captive Wildlife Permit Application, 2003 edition";

(b) "The Annual Transportation Permit Application, July 2003 edition"; and

(c) "The Individual Transportation Permit Application, July 2003 edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. "Wildlife" is defined by KRS 450.010(41).
Section 3. Importation or Possession Prohibited. A person shall not import or possess the following wildlife: wild hog, jack rabbit, monk parakeet, javelina, nutria, wild turkey, San Juan rabbit, bear, bobcat, cougar, raccoon dog, hystrix, (Procyonidae), and wolf. The commissioner may approve exceptions for certain educational, scientific, or research purposes.

Section 4. Permits. (1) Commercial pet and propagation permits. (a) A person buying, selling, possessing, propagating, or exhibiting wildlife for commercial purposes shall obtain a commercial pet and propagation permit from the department. (b) Commercial permit holders shall obtain wildlife only from permitted or qualified sources as determined by the commissioner. (c) Determination of wildlife permitted to be possessed, transported, bought, sold, or exhibited shall be made by the commissioner or his appointed representative. (2) Noncommercial pet and propagation permits. (a) A person possessing, purchasing, or propagating wildlife for noncommercial purposes shall obtain a noncommercial pet and propagation permit from the department within ten (10) days after the wildlife is acquired. (b) Holders of noncommercial permits may obtain wildlife legally from the wild or from a permitted or qualified source as determined by the commissioner. (3) Transportation permits and veterinarian's certificates. (a) A person importing, transporting, or receiving shipment of live wildlife shall first obtain a transportation permit from a conservation officer. A nonresident receiving wildlife shipments in Kentucky may apply directly to the department. (b) All shipments of wildlife shall be accompanied by a veterinarian's certificate stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the veterinarian's certificate. (4) Commercial and noncommercial permits are renewable annually from dates of issue.

Section 5. Applying for Permits. (1) All applications for pet or propagation permits shall be made on standard forms. (2) The applicant shall indicate the source of supply of the wildlife. (3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source. (4) A permit holder shall show this written proof to a conservation officer upon request.

Section 6. Confined Facilities and Inspections. (1) Confined facilities shall be large enough to allow reasonable space for exercise, shelter, and maintenance of sanitary conditions. (2) The holder of a pet or propagation permit shall allow a conservation officer to inspect the facilities at any reasonable time. (3) The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is being kept under unsanitary or inhumane conditions. (4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected. (5) The pet or propagation permit shall be revoked and all wildlife confiscated if the wildlife is not kept in compliance with the terms of the permit. (6) Fee shall not be refunded for permits which are revoked.

Section 7. Conditions for Selling Wildlife. (1) The carcasses of wild deer, wild elk, wild turkey, wild rabbit or quail shall not be sold. (2) Other wildlife or parts thereof produced on a permitted commercial propagation facility may be sold. (3) The pelt of fur bearers may be sold during the regular open season or at other times by written permission of the commissioner. (4) All wildlife wildlife for propagation purposes or to commercial shooting preserves shall bear a tag on each bear stating the name and address of the propagator and permit number. The tags may be obtained from the department. (5) All propagated wildlife sold for food purposes shall be tagged with tags obtained from the department.

Section 8. Sale of Bobwhite Quail for Food Purposes. (1) A person who sells bobwhite quail for human consumption shall have a food purposes permit from the department. (2) This food purposes permit is valid for one (1) year from date of issue. (3) This permit shall be in addition to all other permits required for the operations of propagation farms. (4) The holder of a food purposes permit shall present to a person who sells bobwhite quail an invoice indicating the number of birds and the date of sale. (5) The seller shall have the invoice signed by the purchaser. (6) The seller shall mail one (1) copy of the invoice to the department. (7) The seller and purchaser shall retain one (1) copy of the invoice for at least one (1) year. (8) A restaurant or store selling or selling bobwhite quail for food shall possess and display a valid sale for food certificate. (9) A person shall not sell bobwhite quail for food purposes to restaurants or stores which do not possess a valid sale for food certificate.

C. THOMAS BENNETT, Commissioner
DR. JAMES RICH, Chairman
ANN R. LATTA, Secretary
APPROVED BY AGENCY: June 13, 2003
FILED WITH LRC: July 24, 2003 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 2003 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing at least five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of:
(a) What the administrative regulation does: The administrative regulation establishes the application procedure for transportation and holding permits for native wildlife; the facility specifications; inspection procedures; and conditions for selling wildlife.
(b) The necessity of the administrative regulation: To establish requirements for the safe operation of commercial and noncommercial wildlife facilities for the health and safety of the wildlife and the health and safety of humans.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.130 authorizes the department to promulgate administrative regulations governing the purchase, sale and transportation of wildlife.
(d) How will this administrative regulation assist in the effective
administration of the statutes: KRS 150.180 authorizes the department to promulgate administrative regulations for the purchase, sale and transportation of wildlife. This administrative regulation will supplement the statute by providing the specific procedures for taking, possessing and transporting wildlife. The administrative regulation establishes requirements for obtaining transportationpermits, commercial captive wildlife permits and noncommercial captive wildlife permits and establishes the requirements for holding facilities, both temporary and permanent.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment reorganizes the administrative regulation in a more easily read format; and establishes the wildlife transportation permitting process.
(b) The necessity of the amendment to the administrative regulation: To establish safety measures and transportation protocol to deter the spread of monkey pox and other diseases.
(c) How does the amendment conform to the authorizing statutes: See (c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (d) above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who transport, hold, buy and sell wildlife will be affected. There are approximately 158 commercial pet propagation facilities in Kentucky.
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: 
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees the commercial wildlife propagation permit process. Both divisions currently budget will provide 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: There are fees associated with this administrative regulation. The cost of inspection, administration of the permitting process and enforcement will all be increased. The fees are set forth below. The department does not anticipate having to raise these fees in the near future.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does establish fees. There is a transportation permit fee of $25, and annual transportation permit fee of $250, commercial captive wildlife permit fee of $100 per year, and a non-commercial captive wildlife permit fee of $75 for 3 years.
(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all persons who hold, sell and transport wildlife. All the groups of people are treated in the same administrative regulation.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources (Amendment)

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

RELATES TO: KRS 150.170, 150.175, 150.235, 150.240, 150.230, 150.485, 150.520, 150.525, 150.603, 150.665.

STRAUTORY AUTHORITY: KRS 150.195(4)(f). 150.225, 150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225

authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration dates of licenses and permits. KRS 150.175 establishes the kinds of licenses and fees. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year:
(1) Sport fishing licenses:
(a) Statewide annual fishing license (resident): fifteen (15) dollars;
(b) Statewide annual fishing license (nonresident): thirty-five (35) dollars;
(c) Joint statewide fishing license (resident): twenty-seven (27) dollars; and
(d) Trout permit (resident or nonresident): ten (10) dollars.
(2) Commercial fishing licenses:
(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $125; and
(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $600.
(3) Commercial fishing gear tags (not to be sold singly):
(a) Commercial fishing gear tags (resident) block of ten tags: fifteen (15) dollars; and
(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: ninety (90) dollars.
(4) Hunting licenses:
(a) Statewide hunting license (resident): fifteen (15) dollars;
(b) Statewide hunting license (nonresident): $115 dollars;
(c) Statewide junior hunting license (resident or nonresident): eight (8) dollars and seventy-five (75) cents;
(d) Statewide waterfowl permit (resident or nonresident): ten (10) dollars; and
(e) Migratory game bird permit (resident or nonresident): five (5) dollars.
(5) Combination hunting and fishing license (resident): twenty-two (22) dollars and fifty (50) cents.
(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.
(7) Trapping licenses:
(a) Trapping license (resident): seventeen (17) dollars and fifty (50) cents;
(b) Trapping license (resident landowner/tenant): ten (10) dollars; and
(c) Trapping license (nonresident): $120.
(8) Game permits:
(a) Game permit, deer (resident or nonresident): twenty-five (25) dollars;
(b) Junior game permit, deer (resident or nonresident): fifteen (15) dollars;
(c) Bonus antlerless (Zone 1) deer permit (two (2) tags per permit (resident or nonresident): twelve (12) dollars and fifty (50) cents;
(d) [Bonus archery only] deer permit (resident or nonresident): twelve (12) dollars and fifty (50) cents;
(e) Bonus quota hunt deer permit (resident or nonresident): fifteen (15) dollars;
(f) [4][4] Game permit, spring turkey (resident or nonresident): twenty (20) dollars;
(g) [4][4] Game permit, fall firearm turkey (resident or nonresident): fifteen (15) dollars; and
(h) [4][4] Game permit, fall archery turkey (resident or nonresident): fifteen (15) dollars.
(9) Peabody or Addington Enterprises-Robinson Forest individual permit: twelve (12) dollars and fifty (50) cents.
(10) Commercial mussels licenses:
(a) Mussel tagging license (resident): $400;
(b) Mussel tagging license (nonresident): $1,600;
(c) Mussel buyer's license (resident): $600; and
(d) Mussel buyer's license (nonresident): $1,600.
(11) Sportsman's license (resident) (includes resident hunting
and fishing combination, spring turkey permit, fall firearm turkey permit, fall archery turkey permit, trout permit, state waterfowl permit and game permit for deer: eighty (80) dollars.

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

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:
   (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
   (b) Live fish and bait dealer's license (nonresident): $100.

(2) Commercial taxidermist license: $125.

(3) Commercial guide licenses:
   (a) Commercial guide license (resident): $125; and
   (b) Commercial guide license (nonresident): $300.

(4) Nonresident hunting preserve license: twenty (20) dollars.

(5) Shooting preserve permit: $150.

(6) Commercial fox hound training enclosure permit: $275.

(7) Collecting permits:
   (a) Educational wildlife collecting permit: ten (10) dollars; and
   (b) Scientific wildlife collecting permit: $200.

(8) Food permits:
   (a) Food permit for selling bobwhite quail from propagation farms only: $150; and
   (b) Retail food permit for propagated quail: five (5) dollars.

(9) Pay lake license:
   (a) First two (2) acres or less: $125; and
   (b) Per additional acre or part of acre: twenty (20) dollars.


(11) Commercial fish propagation permit: $100.


(13) Annual wildlife transportation permit: $250.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: effective for permits with an effective beginning date on and after January 1, 2001, the cost shall be seventy-five (75) dollars.

(2) Noncommercial captive wildlife [pet and propagation] permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each.

(1) Short-term licenses:
   (a) One (1) day resident fishing license: six (6) dollars;
   (b) Two (2) day resident fishing license: twelve (12) dollars;
   (c) One (1) day nonresident fishing license: seven (7) dollars;
   (d) Two (2) day nonresident fishing license: fourteen (14) dollars;
   (e) Fifteen (15) day nonresident fishing license: twenty-five (25) dollars;
   (f) Five (5) day nonresident hunting license (not valid for deer, elk or turkey hunting): thirty-two (32) dollars and fifty (50) cents; and
   (g) Three (3) day fur bearer's license: fifty (50) dollars.

(2) Individual wildlife transportation permit: twenty-five (25) dollars.

(3) Special commercial fishing permit: $600.

(4) Commercial waterfowl shooting area permit: $125.

(5) Shoot to retrieve field trial permits:
   (a) Per trial (maximum four (4) days): fifty (50) dollars; and
   (b) Single day: fifteen (15) dollars.

(6) Boat dock permits (per year): five (5) dollars.

(7) Peabody or Addington Enterprises-Robinson Forest event permit: twenty-five (25) dollars.

Section 5. Licenses, tags and permits listed in this section shall be valid on a per unit basis as specified.

(1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Pond stocking fee (per stocking): twenty-five (25) dollars.

(6) Captive cervid permit (per facility, per year): $100.

Section 6. The following licenses shall be valid from April 1 through March 31 of the following year:

(1) Purser's license (resident): $175.

(2) Purser's license (resident): seventy-five (75) dollars.

(3) Purser's license (nonresident): $300.

Section 7. Captive Cervid Permits. (1) Permits for holding captive cervids issued under 301 KAR 2:083 shall be valid for one (1) year from the date of issue and shall be perpetually renewable if the holder has complied with this administrative regulation and 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:082, and 301 KAR 2:083.

(2) The fee for a captive cervid permit shall be $100 per facility.

The renewal fee shall be $100.

C. THOMAS BENNETT, Commissioner
JAMES RICH, Chairman
ANN R. LATTA, Secretary
APPROVED BY AGENCY: July 23, 2003
FILED WITH LRC: July 24, 2003 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September, 2003 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen Benz, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benz

(1) Provide a brief summary of:
   (a) What the administrative regulation does: Establishes the requirements for license, tag and permit fees.
   (b) The necessity of the administrative regulation: To establish procedures for issuing and applying for licenses, tags and permits.
   (c) How does this administrative regulation conform with the authorizing statute: KRS 150.195 authorizes the department to promulgate administrative regulations for the design, issuance and distribution of licenses and permits issued by the department. KRS 150.225 authorizes the department to promulgate administrative regulations to prescribe reasonable fees for all licenses and permit.
   (d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.195 and 150.225 authorize the department to promulgate administrative regulations regarding licenses and permits. This administrative regulation establishes fees for licenses and permits.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change the existing administrative regulation: The amendment replaces the "Zone One (1) Bonus Permit" with a "Bonus Antlerless Permit"; changes the name of the "noncommercial" and "commercial wildlife pet and propagation permit" to "noncommercial" and "commercial captive wildlife permit" and creates an "annual wildlife transportation permit".
   (b) The necessity of the amendment to this administrative regulation: To create a bonus permit that is not zone specific which will provide more bonus antlerless deer hunting opportunity; to change the name of a fee to reflect a more appropriate name; and create a
new permit and fee that will save persons money (rather than apply for the "wildlife transportation permit" each time a person wants to transport wildlife, he or she may apply for the "annual wildlife transportation permit" that is valid for the transportation for any number of trips during the permit year.

(c) How does the amendment conform to the authorizing statutes: See "(c)" above.

(d) How the amendment will assist in the effective administration of the statutes: See "(d)" above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected: Deer hunters will be affected and persons who transport wildlife. There are approximately 170,000 deer hunters in Kentucky and approximately 200 persons who transport wildlife each year.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Persons who deer hunt will be positively affected because the bonus deer permit is now not zone specific. The bonus permit is applicable in any zone. Persons who transport wildlife will be positively affected because a new permit will be available that allows persons to transport wildlife on any number of trips throughout the year, rather than applying for the wildlife transportation permit each time he or she wish to transport wildlife.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Administrative Services already oversees licensing and permits and will not have to draw upon another budget or source of funding for implementation. The Division of Law Enforcement will enforce the compliance with the bonus archery antlerless permit privileges.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is a new fee implemented in this administrative regulation. It is the annual wildlife transportation permit fee which is $250. This fee is necessary to frays the administrative and enforcement costs to regulate persons who transport wildlife. It is necessary to have an annual transportation permit due to the threat of wildlife diseases which are often transmitted from wildlife outside of Kentucky.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees; Yes, the annual wildlife transportation fee is established directly.

(9) TIERING: Is tiering applied? Tiering was not used because all persons are eligible to purchase the bonus antlerless permit and the privileges of the permit apply to all persons. All persons who transport wildlife are treated the same as they are all held accountable for obtaining a wildlife transportation permit or annual wildlife transportation permit.

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing and Product Promotion (Amendment)

302 KAR 40:010. Certification of organic production, processing, or handling operations.

RELATES TO: KRS 260.020, 260.030, 7 C.F.R. 205
STATUTORY AUTHORITY: KRS 260.020(3), 260.030(1)(k), 7 C.F.R. 205

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.030(1)(k) requires the Department of Agriculture to establish an Organic Agricultural Product Certification Program. This administrative regulation establishes the procedures for certification of organically-produced foods.

Section 1. All producers, processors, and handlers of organic agricultural products shall comply with the requirements of 7 C.F.R. 205.

Section 2. Certification and Records. (1) A producer, processor, or handler seeking to receive or maintain organic certification shall submit a completed [producer] application. For producers, a yearly soil test analysis shall be performed and results submitted to the department when applying for or renewing organic certification. An irrigation and water test may be required by the department for certification or renewal of certification if the primary water source is an open water source.

(2) A federally-certified inspector shall complete a field inspection report of the organic production entity and the applicant shall be present during the [initial] inspection. Upon receipt of a field inspection report, the department shall, within thirty (30) days, make a determination of certification and notify the applicant in writing of its decision.

(3) [All farm production records shall be maintained by applicant for a period of three (3) years and be made available to the department upon request.

(4) The department shall conduct an annual inspection of every certified organic [production] entity.

Section 3. Nonprofit, Educational, and Charitable Organization. Nonprofit, educational, and charitable organizations, as defined by the Internal Revenue Code, shall be certified for production, processing, or handling organic products, but shall not be required to pay the $125 certification fee, unless the organizations have more than $5,000 gross sales of organic products.

Section 4. Nonresident Certifiers. Kentucky producers, processors, and handlers of organic products may be certified by nonresident certifiers if the certifiers are registered with the Kentucky Department of Agriculture. Registration shall require the following:

(1) Name of the certifier;
(2) Address of certifier;
(3) Name and address of the entity to be certified; and
(4) Documentation that the certifier is certified pursuant to National Organic Program requirements.

Nonresident certifiers shall not initiate the certification process until they have registered and submitted all required information.

Section 5. [4] The department shall devise and distribute a label in conformance with 7 C.F.R. 205.303. Producers, processors, and handlers shall be certified [organic] by the department prior to using the label. The cost of the label shall be included in the certification fee. Certified producers, processors, and handlers shall be provided a roll of 400 labels or an ink stick that may be reproduced.

Section 6. [4] Certification Review and Standards Advisory Committee. (1) The Certification Review and Standards Advisory Committee shall consist of seven (7) members, including consumers, advocates, handlers, or processors of organic products and at least three (3) farmers who produce organic products.

(2) The committee shall be appointed by the commissioner and serve a term of two (2) years. Members may be reappointed to additional two (2) year terms.
(3) The committee shall determine policy regarding organic production, processing, and handling.
(4) Members shall receive reimbursement for mileage only for meetings of the full committee.

Section 7. [5] Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Office of Agricultural Marketing and Product Promotion, [Division of Marketing] 100 Fair Oaks, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.: 7 C.F.R. 205, "National Organic Program, January 1, 2001".

Section 8. [6] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Organic Farm/Crop Certification Application (June 2003)";
(b) "Organic Process/Handling Plan Application (July 2003)"; and
(c) "Organic Livestock Plan Application (July 2003)": [Kentucky Department of Agriculture Organic Certification Program Producer Application (June 2003) is incorporated by reference.]
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing and Product Promotion, [Division of Marketing] 100 Fair Oaks, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department website at www.kyagr.gov.

BILLY RAY SMITH, Commissioner
APPROVED BY AGENCY: August 5, 2003
FILED WITH LRC: August 6, 2003 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2003, at 9 a.m., local prevailing time, at the Room 188, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 2003, 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 and then only at the requestors expense. If you have a disability for which this agency needs to provide accommodations, please notify us by September 23, 2003. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. The hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farnow, General Counsel, Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, Phone (502) 564-5125, Fax (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Kring
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes procedures to be certified as an organic food producer, processor, or handler.
(b) The necessity of this administrative regulation: To advise producers, processors, and handlers of procedures necessary to obtain certification as an organic food producer, processor, or handler.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.030(1)(k) requires the department to promulgate administrative regulations to carry out the provisions of the statute. This regulation establishes requirements for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: To assure the public that products advertised as organically-grown are products of certified organic producers, processors, or handlers.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative: The amended administrative regulation will require processors and handlers of organically-grown products to be certified. Allows nonresidential organic entities to be certified by Kentucky upon compliance with this administrative regulation.
(b) The necessity of the amendment to this administrative regulation: To advise processors and handlers of organically-grown products of the procedures necessary for certification as an organic agricultural producer, processor, or handler.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires the department to establish certification criteria; this administrative regulation establishes procedures to be certified.
(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation establishes procedures and requirements to be certified as an organic agricultural producer, processor, or handler.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all persons who wish to become certified to produce, process, or handle organically-grown products in the Commonwealth.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administration, if new, or by the change if it is a amendment. All persons wishing to become certified will be required to comply with all requirements of the administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A
(c) What is the source and funding to be used for the implementation and enforcement of this administrative regulation: General funds and fees paid by participants in the organic program.
(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: Yes, because processors and handlers will now require certification. This increase in the new entities requiring certification will increase the administrative costs of the organic program.
(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases and fees: This administrative regulation establishes a dollar-volume fee for handlers and processors. Establishes a fee of $250 for nonresidential organic entities.
(8) TIERING: Is tiering applied? Yes. Producers are required to pay a fee of $125; processors and handlers pay a fee of $125 plus $100 for each $100,000 of organic gross; and nonresidential organic entities will pay a fee of $250.

JUSTICE CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:160. Department of Criminal Justice Training - Kentucky Police Corps basic training: graduation requirements; records.

RELATES TO: 28 CFR 92.1-92.13, 42 USC 14091-14102
STATUTORY AUTHORITY: KRS 15A.070(1), (5), 15A.150, 15A.330(1)(c), (h), 42 USC 14054, 14099
NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 1404(a) requires a state desiring to participate in the Police Corps Program to designate a lead agency to submit and administer the program in the state. KRS 15A.150 designates the Justice Cabinet to administer all state and federally-funded grant programs related to criminal justice. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice
Training - Kentucky Police Corps basic training course and for maintenance of the resulting basic training records.

Section 1. Definitions. (1) "Cadet" means a person attending the Police Corps basic training course.

(2) "Director" means the director of the Training Operations Division of DOCJT, or his designee.

(3) "Police Corps basic training" means the 1,305 [4,320] 1/2 hour council-approved basic training course conducted by DOCJT; and

(4) "Police Corps director" means the director of the Police Corps section of DOCJT, or his designee.

Section 2. Police Corps Basic Training Content. Police Corps basic training shall consist of 1,305 [4,320] 1/2 hour council-approved basic training course conducted by DO [1/2 hours of training, and require a cadet to demonstrate proficiency in the following three (3) areas:

(1) [Area I];

(a) Five (5) academic tests; and

(b) American Red Cross certification in the following (First aid and CPR, including):

1. Professional resuer CPR-automated external defibrillation; and

2. [American Red Cross certified] First aid [-and also Automated external defibrillation].

(2) Area II:

(a) Firearms, Including:

1. Day handgun;

2. Night handgun;

3. Shotgun; and

4. Firearms familiarization;

(b) Vehicle operations, including:

1. Precision course; and

2. Emergency response course;

(c) Defensive tactics, which shall include a:

1. Skills test; and

2. Pressure point control tactics management system (PPCT) written certification test; and

(d) Mountain bike.

(a) Breath test, including:

1. Practical examination; and

2. Written examination;

(b) DUI detection, including:

1. Practical examination; and

2. Written examination;

(c) Criminal Justice Information Systems Mobile Data Terminal, including a combined practical and written examination.

Section 3. Training Modules. Police Corps basic training shall be divided into nine (9) different training modules on the following subjects:

(1) Orientation to basic training;

(2) Theft;

(3) Warrant/disorder;

(4) Traffic stops;

(5) Driving under the influence (DUI);

(6) Crimes against property;

(7) Collision;

(8) Crimes against persons; and

(9) Graduation.

Section 4. Police Corps Basic Training Graduation Requirements. To graduate from Police Corps basic training, a cadet shall:

(1) Successfully complete a minimum of 1,305 [4,320] 1/2 hours of training based upon the curriculum approved by the council in accordance with KRS 15.330 and 503 KAR 1:050;

(2) Attain a seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A cadet who does not achieve a seventy (70) percent overall score shall be considered to have failed Police Corps basic training;

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

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

Section 5. [4] Physical Training Requirements. A cadet shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the start of the Police Corps basic training course, the cadet shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. [Sixteen (16)] inch vertical jump;

2. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the cadet’s body weight;

3. [Eighteen (18)] sit-ups in one (1) minute;

4. [30] meter run in sixty-five (65) seconds;

5. Twenty (20) pushups; and

6. [One and five-tenths (1.5)] mile run in seventeen (17) minutes twelve (12) seconds.

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

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

1. He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;

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

3. If the cadet passes all previously-failed events on the date of the retest, he shall have met the physical training entry requirements; and

4. If the cadet does not pass all previously-failed events on the date of the retest, he shall be unqualified to participate in the Police Corps basic training course for which he is currently enrolled, and may reapply to participate in a future DOCJT basic training course. The cadet shall receive no credit for the part of the Police Corps basic training course which he was completed.

(2) Physical training graduation requirements.

(a) Within five (5) days from the final date of the Police Corps basic training course, the cadet shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. [Seventeen (17)] inch vertical jump;

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

3. [Eighteen (18)] sit ups in one (1) minute;

4. [300] meter run in sixty-five (65) seconds;

5. [Twenty-five (25)] pushups; and

6. [One and five-tenths (1.5)] mile run in sixteen (16) minutes fifteen (15) seconds.

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

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

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

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

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

4. If the cadet does not pass all previously-failed events on the date of the retest, he shall be considered to have failed Police Corps basic training.

(3) Physical training safety factors.

(a) Prior to administering the outdoor events, specifically the 300 meter run and the one and five-tenths (1.5) mile run, of the physical training entry or graduation requirements, the physical training instructor shall survey weather conditions to determine whether the
outdoor events can be safely performed without risk of physical injury due to:
1. Extreme cold, snow, or icy conditions;
2. Extreme heat, humidity, or a combination thereof; or
3. Inclement weather including lightning, excessive wind, or rain.
(b) If the physical training instructor determines that it would be dangerous to administer the outdoor events due to the weather conditions, the time period in subsections (1)(a) and (2)(a) of this section may be extended until the events can be safely administered.
(c) During Week 16 of Police Corps basic training, the cadets shall be administered the events of the physical training requirements for purposes of reporting their progress to their sponsoring law enforcement agencies. If weather conditions prohibit administration of the outdoor events of the physical training graduation examination prior to the last scheduled date of the Police Corps basic training course, a cadet’s successful completion of the 300 meter run and the one and five-tenths (1.5) mile run during Week 16 testing may be accepted in lieu of having to comply with the examination established in subsection (2)(a) of this section.

Section 6. [5] Reexaminations. (1) A cadet shall be permitted one (1) reexamination in each of the three (3) areas of Police Corps basic training.
(2) A cadet who fails an examination, other than defensive tactics, shall not be reexamined:
(a) Earlier than twenty-four (24) hours from the original examination;
(b) Later than:
   1. Ten (10) days after the original examination. A cadet may submit a written request to the Police Corps Director for an additional five (5) days in which to take the reexamination [Thirty (30) days after the original examination]; or
   2. The last scheduled day of the Police Corps basic training course.
(3) Failure of a defensive tactics examination.
(a) If the failure occurs prior to the last scheduled day of defensive tactics training, the cadet shall not be reexamined earlier than the last scheduled day of defensive tactics training.
(b) If the failure occurs on the last scheduled day of defensive tactics training, the cadet shall not be reexamined:
   1. Earlier than twenty-four (24) hours from the original examination;
   2. Later than the last scheduled day of the Police Corps basic training course.
(4) A cadet shall be considered to have failed Police Corps basic training if the cadet:
(a) Fails a reexamination in accordance with subsection (1) of this section or
(b) Fails two (2) examinations in the same area of Police Corps basic training.

Section 7. [6] Failure and Repetition of Police Corps Basic Training. (1) A cadet who has failed a Police Corps basic training course shall be unqualified for future Police Corps basic training courses. The cadet may participate, if qualified, in one (1) DOCJT law enforcement basic training course in its entirety during the following twelve (12) months.
(2) The cadet or his agency shall pay all fees for the DOCJT basic training course.

Section 8. [7] Absence. (1) A cadet may have excused absences from Police Corps basic training with approval of the director or the Police Corps director.
(2) An excused absence from Police Corps basic training which causes a cadet to miss any of the required 1,305 (4,000) 1/2 hours of training shall be made up through an additional training assignment.

Section 9. [8] Leave of Absence from Police Corps Basic Training. (1) Pursuant to 42 USC 14096(e), a cadet:
(a) Who requests a leave of absence from Police Corps basic training due to temporary physical or emotional disability shall be granted the leave for a period not to exceed one (1) year, or eighteen (18) months if there are multiple requests;
(b) Who requests a leave of absence from Police Corps basic training for a reason other than those described in paragraph (a) of this subsection may be granted the leave for a period not to exceed one (1) year, or eighteen (18) months if there are multiple requests or
(c) Who requests a leave of absence from Police Corps basic training to serve on an official church mission may be granted the leave for a period not to exceed thirty (30) months.
(2) The length of leaves of absence from educational study, Police Corps basic training, or service that a cadet has previously received will be deducted from the time available for a leave of absence from Police Corps basic training.
(3) A cadet who receives a leave of absence shall be required to repeat Police Corps basic training in its entirety.

Section 10. [9] Maintenance of Records. (1) All training records required for Kentucky Law Enforcement Foundation Program Fund purposes shall be retained by DOCJT, but a copy of pertinent facts shall be sent to the fund administrator upon written request.
(2) All training records shall be:
(a) Available to the Office of the Police Corps and Law Enforcement Education of the United States Justice Department, the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and
(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

WILLIAM F. WALSH, Ph.D., Chair
APPROVED BY AGENCY: August 12, 2003
FILED WITH LRC: August 14, 2003 at 1 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 9 a.m. in Room 211, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comment shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137; phone (859) 622-3073, fax (859) 622-3162.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephen D. Lynn
(1) Provide a brief summary of:
(a) What this administrative regulation does: establishes the guidelines and procedures for graduation from the DOCJT - Kentucky Police Corps basic training course.
(b) The necessity of this administrative regulation: the regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to establish and prescribe qualifications for attendance to the DOCJT - Kentucky Police Corps basic training course.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330 requires the Justice Cabinet to administer "all state programs and all state and federally-funded grant programs related to criminal justice." KRS 15.330(1)(c) and (h) authorize the Kentucky Law Enforcement Council to prescribe qualifications for attendance of law enforcement training course and to promulgate reasonable rules and administrative regulations. This administrative regulation establishes graduation requirements for the
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WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
Division of Administrative Services
(Amendment)

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 authorizes the Commissioner of the Department for Technical Education [State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations relating to the extent and duration of the Kentucky Tech System school term, use of school days, and extended employment.

Section 1. [Postsecondary schools shall have a regular school year of four (4) terms or quarters with no less than 200 teaching days. A school calendar shall be prepared and distributed annually to students and staff.

Section 2. Postsecondary schools may provide a three (3) week intercession in addition to the regular school year.

Section 3. All postsecondary schools shall close five (5) days during the spring for a break for staff and students in the school. Staff shall be on some form of official leave during this time. The school director may appoint an employee on a work-study or extension program for or for commuting circumstances. If a break occurs on a date designated for an official statewide conference or an approved staff development activity, the employee may be on official work status without loss of leave.

Section 4. Instructors and administrators employed in full-time postsecondary programs shall be employed twelve (12) months. This time shall be utilized when students are not in school or when there is no scheduled in service. No instructor shall be prohibited from the opportunity to use leave time equal to the amount accrued during a given year.

Section 5. The regular work year for secondary instructors in area centers and state vocational technical schools shall be August 1 through June 15. During this work year, secondary students shall be in classes based on the participating school district schedules. An [He] area center shall not be closed when secondary school students need to be served for the participating school districts. Any employee [Employees] required to work on an official holiday [holidays] in order to serve students shall be granted compensatory time.

If a school district closes [district closes] due to inclement weather, staff in the area technical center or state school [state schools] shall report to work as usual or take official leave unless a state of emergency is declared by the Governor or the appointing authority.

Section 2. [He] Effective July 1, 1991, secondary instructors in area technology centers [area vocational technical schools or area vocational education centers] may be employed up to six (6) weeks beyond the ten and one-half (10.5) month calendar year (August 1 through June 15) for specified activities which cannot be carried out routinely during the year and which include at least three (3) weeks of planned direct student contact. The maximum extended time for an instructor without three (3) weeks of planned direct student contact shall be three (3) weeks. Extended instructional summer options shall [are to be] planned jointly by the instructor and school principal or commissioner [director].

(1) Extended employment activities shall conform to the following conditions:

(a) Up to six (6) weeks may be approved for supervision of students in specific classroom instruction. Before approval shall be [is] granted for extended time, an instructional plan for the summer teaching activities shall be approved by the central office. This plan shall include purpose, classes to be taught, time schedule, and inclusive dates.
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(b) Up to one (1) week may be approved for required state technical update and school in-service.

(c) Up to two (2) weeks may be approved for staff or industry exchange and other educational approved programs. The commissioner may request secondary instructors [to] perform other essential services for which extended employment shall be provided. These special requests shall be handled on an individual basis.

(2) All secondary instructors in area technology centers [state vocational technical schools or area vocational education centers] shall make an official request for extended employment to the regional executive director by April 15 and, by May 30 of each year, shall receive written notification of approved extended days.

Section 3. [22] Effective July 1, 1991, any instructor [the instructors] employed ten and one-half (10 1/2) months may request that his salary [their salaries] be paid in twenty-four (24) paychecks. The last two (2) paychecks shall [will] be adjusted if necessary to reflect any salary variance due to changes in work schedules.

Section 4. All area technology centers [All schools including area centers, state vocational technical schools, and regional offices] shall be officially closed to [employees and] students on the official holidays designated for Christmas and New Year’s. An employee may either work during this period or be on some form of approved leave. If the employee desires to work during this period, he may so do only upon the submission of a work plan by the employee’s supervisor prior to the initiation of the work. The principal [as well as the days in between the employees shall be on some form of official leave status with the exception of the four identified paid holidays. The regional executive director may require an employee to work for safety or security reasons.

Section 5. [30] Effective July 1, 1997, extended employment shall be eliminated except for specific activities approved by the Commissioner of the Department of [State Board for Adult and Technical Education]. (‘Extension Employment for 10 1/2 Month Employee’ incorporated by reference.) Applications for expanded work year extended employment shall be received by the Commissioner of the Department of Technical Education [Secretary of the State Board for Adult and Technical Education] on or before April 15th in order to be considered for approval.

EMIL S. JEZIK, Commissioner
APPROVED BY AGENCY: August 15, 2003
FILED WITH LRC: August 15, 2003 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2003, prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by September 17, 2003, five (5) workdays prior to the hearing of their intent to attend. The hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on this proposed administrative rule. A transcript of the public hearing shall 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.

(1) Provide a brief summary of:
(a) What this administrative regulation does; Provides procedures for the use of annual and compensatory leave by Department for Technical Education 1518 school based employees during Christmas and spring breaks.

(b) The necessity of this administrative regulation: Establishes guidelines for Department for Technical Education 1518 school based employees for working or taking leave during Christmas and spring break when students are not present.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 1518 requires the appointing authority to promulgate regulations relating to leave time.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes more flexible rules for personnel scheduling in area technology centers when students are not present.

(2) If 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 regulation shall allow the 1518 school based employee to work during the Christmas and spring break periods. Previously they were required to take leave.

(b) The necessity of the amendment to this administrative regulation: Current regulations prohibit annual and compensatory leave under the regulation’s conditions during Christmas and spring break.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment gives the employees and their supervisors more flexibility in determining teachers' schedules for Christmas and spring break when students are not in attendance at the area technology center.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for more flexibility in scheduling teachers in the area technology centers during Christmas and spring break. 1518 employees may work or take leave or a combination of the two.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 600 teachers in the department’s 53 area technology centers.

(4) Provide an assessment of: how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The group affected will have the additional option of working an approved work-plan, during Christmas and spring break.

(5) Provide an estimate of how much will cost to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional funds shall not be required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Neither direct nor indirect fees shall be established.

(9) TIERING: is tiering applied? No. This regulation applies to a single group of employees, 1518 school based employees (teachers) and applies to all uniformly.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(Amendment)

787 KAR 1:090. Unemployed worker’s [Claimants] reporting requirements.

RELATES TO: KRS 341.350, 341.380
STATUTORY AUTHORITY: KRS 1518.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the registration and reporting requirements that the unemployed worker shall [claimant must] meet to draw benefits and the date when the claim shall [will] be valid. It further sets out the length of time a claim may be backdated and the procedures for electronic, telephone and mail claims.
Section 1. Registration for Work. (1) An unemployed [a] worker shall be registered for work with a [the] state employment service before he shall be eligible to receive benefits. A registration shall be considered filed when the unemployed worker completes the registration form by internet, telephone, or by reporting in person, and answers all questions and makes all certifications required by the secretary.

(2) When an unemployed worker [At the time a claimant] completes an initial application for benefits, he shall be assigned a group classification code: A, B, [A, B, C, or D] based upon his reemployment prospects.
(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial claim. [Claims of claimants who have been employed and have not been employed will be considered in this group] or (b) Group B shall include any worker who is:
1. Unemployed and has definite return prospects within a period of twelve (12) weeks from the date of filing of the initial claim;
2. Unemployed because of a labor dispute in the establishment where he has been employed;
3. Includes:
   1. A union which has not been employed, or
   2. A union which has not been employed within the last twelve (12) weeks;
4. Claims of workers employed within a period of twelve (12) weeks from the date of filing of the initial claim;
5. A member of a union which has been employed;
6. A member of a union which has definite return prospects within a period of twelve (12) weeks from the date of filing of the initial claim.

(b) Group B shall include any worker who is:
1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial claim;
2. Unemployed because of a labor dispute in the establishment where he has been employed;
3. Includes:
   1. A member of a union which has been employed;
   2. A member of a union which has not been employed within the last twelve (12) weeks;
4. Claims of workers employed within a period of twelve (12) weeks from the date of filing of the initial claim;
5. A member of a union which has been employed;
6. A member of a union which has definite return prospects within a period of twelve (12) weeks from the date of filing of the initial claim.

(c) Group C includes workers whose work record indicates continuing availability, or ability to reemploy. These claims shall be classified temporarily in group A. [Claims of workers whose work record indicates continuing availability will be considered in this group.]

(d) Group D consists of workers who require closer and more frequent determination of availability, or ability to reemploy. [Claims of workers whose work record indicates needs for closer and more frequent determination of availability, or ability to reemploy will be considered in this group.]

(3) During any benefit year, an unemployed worker [a claimant] may be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker [claimant]. All other claimants shall report to the state employment service for an in-depth interview and completion of an ES-514 form in order to receive full job placement service. The registration shall remain active for six (6) months from the date of registration.

Section 2. Initial and Reopened Claims for Benefits. (1) In order for an unemployed [a worker] to file an initial or reopened claim for benefits he shall:
(a) [Report in person with the following proof of identity: Social Security card, valid driver's license with a photograph or other acceptable photo identification; to a state employment office which serves unemployment insurance claimants] to Complete an initial claim form by:
   1. Internet; or
   2. Telephone; or
   3. Reporting in person to a state employment service office for assistance; or
   4. By any other means prescribed by the secretary; and
(b) Provide [and] certifications required by the secretary to make a determination as to the worker's eligibility. If any issues regarding the unemployed worker's [claimants'] eligibility as defined in KRS 341.350 or a potentially disqualifying circumstance as defined in KRS 341.360 or 341.370 are detected, a fact-finding investigation [interview] shall be conducted [scheduled] at which the claimant, or any person completing the application on behalf of the claimant, shall be present.

(2) In areas served by a full-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be filed on the first day of the week in which the worker becomes unemployed. Provided the claimant reports to the appropriate office for the purpose of filing a claim for benefits on the first day the office is open following his last day of work, otherwise the claim shall be dated as of the first day of the week in which the worker reports to a part-time or full-time state employment office which serves unemployment insurance claimants.

(3) Notwithstanding the provisions of subsections (2) and (3) of this section the initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer, provided the claimant reports to a state employment office which serves unemployment insurance claimants. For the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file [report] at an earlier date, the secretary may authorize the backdating of an initial or reopened claim [claims] in an area serviced by a full-time state employment office which serves unemployment insurance claimants to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first filed, [reported or indicated his desire to file a claim, and in an area serviced by a part-time state employment office which serves unemployment insurance claimants, to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.]
Section 4, Mail Claims. (1) The secretary may authorize an individual to file his continued claim by mail if reporting in person would require an unreasonable amount of travel or money. 

A continued claim shall cover the first three or four weeks indicated on the form. Any claim filed by mail shall be considered filed on the day it is filed and deposited in the mail and marked the date of filing. The provisions of this administrative regulation governing the dating and backing up of a continued claim (continued claims filed in areas covered by a full-time state employment office) shall also apply to claims filed by mail, and unless the claim is filed within the time prescribed herein, it shall not be allowed.

Section 4, Employer Filed Claims. (1) Notwithstanding the provisions of Sections 2 and 3 of this administrative regulation, an employer may file a claim on behalf of an unemployed worker using electronic means approved by the department.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim shall be permitted to file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5, Claims by Reemployed Workers. Notwithstanding the provisions of Section 3 of this administrative regulation, a worker who has filed his initial claim for benefits, and who has been reemployed for a benefit period, may file a continued claim for benefits by completing a continued claim form and certification required by the secretary to determine the worker's continued eligibility for benefits and submitting the form by mail to the Division of Employment Insurance. The continued claim shall cover the week of unemployment indicated on the claim form provided that the week of unemployment ended not earlier than thirty-five (35) days prior to the date on which the claim was deposited in the mail.

Section 6, Eligibility Review. An unemployed worker claiming benefits shall report in person to a state employment office as directed on a periodic basis for the purpose of continued benefits eligibility review.

Section 7, Failure to Comply with Administrative Regulations. Notwithstanding any other provision of this administrative regulation, if the secretary finds that the failure of any unemployed worker to file a claim for benefits and register for work within the specified time is due to the fault or failure on the part of the employer to comply with any of the provisions of these administrative regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim or failure by the division’s personnel to discharge necessary responsibilities, the unemployed worker shall have fourteen (14) days after he has received appropriate notice of the findings of the secretary, within which to file a claim, provided that a [claim may not be filed by an unemployed worker after the last day of the week in which the unemployment began.

JAMES F. THOMPSON, Commissioner
APPROVED BY AGENCY: August 14, 2003
FILED WITH LRC: August 15, 2003 at 9 a.m.
FILED IN THIS ADMINISTRATIVE DECISION PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003 at 10 a.m. EDT at the Department for Employment Serv-
ices Commissioner’s Conference Room, 275 East Main Street, Second Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, 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. 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 October 1, 2003. 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: Larry W. Moore, Internal Policy Analyst, Division of Employment Insurance, 275 East Main Street, Mail Stop 2-CD, Frankfort, Kentucky 40621, phone (502) 564-2900, fax (502) 564-5502.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry W. Moore
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules and processes by which an unemployed worker may apply for unemployment insurance benefits. The proposed amendment provides for remote electronic (internet, telephone, and employer-filer) application for benefits, and simplifies the rules for backdating of claims.

(b) The necessity of this administrative regulation: This administrative regulation is required to establish the means by which an unemployed worker may apply for unemployment insurance benefits as provided by KRS Chapter 341. The proposed amendment regarding remote electronic filing is necessary in order to authorize these more convenient application methods and to implement re-engaged business processes within the Department for Employment Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 341 provides for a program of unemployment insurance benefits for Kentucky workers who become unemployed through no fault of their own. Pursuant to KRS 341.115(1), the Secretary of the Cabinet for Workforce Development is empowered and authorized to promulgate administrative regulations necessary to implement the Unemployment Insurance Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As noted, the current administrative regulation provides the rules and means by which unemployed workers may apply for unemployment insurance benefits, without which the statutes could not be implemented. The proposed amendment regarding remote application for benefits provides for simpler and more cost effective means for unemployed workers to make application for their benefits, and reduces the staff time required to administer unemployment insurance claims. The proposed amendment regarding backdating of claims provides for a simpler and more consistent method for both unemployed workers and agency staff.

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

(a) How the amendment will change this existing regulation: The proposed amendment provides for new and simplified options for unemployed workers making application for unemployment insurance benefits, and simplifies the rules regarding backdating of unemployment insurance claims.

(b) The necessity of the amendment to this administrative regulation: The Department for Employment Services has undertaken an extensive re-engineering of business processes relating to the administration of the unemployment insurance program, with the aim of utilizing leading-edge information management and communication technologies to simplify and reduce the cost of processing unemployment insurance claims. As a result of this undertaking, the department is now prepared to offer unemployed Kentuckians more convenient and cost-effective options for applying for unemployment benefits.
insurance benefits. The proposed amendment regarding remote filing options authorizes claimants to take advantage of these developments.

(c) How the amendment conforms to the contents of the authorizing statutes: KRS Chapter 341 provides for a program of unemployment insurance benefits for Kentucky workers who become unemployed through no fault of their own. Pursuant to KRS 341.115(1), the Secretary of the Cabinet for Workforce Development is empowered and authorized to promulgate administrative regulations necessary to implement the unemployment insurance program. The proposed amendment specifically conforms to the authorizing statutes in that it provides for additional options by which unemployed workers may apply for the benefits authorized under the cited chapter.

(d) How the amendment will assist in the effective administration of the statutes: Until now the process of application for unemployment benefits has imposed the burden of travel to an office of the Department for Employment Services upon every unemployed worker seeking to obtain those benefits. The process has also been labor-intensive for the staff of the agency. The proposed amendment will eliminate the need for most unemployed workers to travel to an office of the agency since application may henceforth be made remotely by internet or telephone. By eliminating or reducing the interaction between the unemployed worker and agency staff, the processing of benefit applications, the labor and cost associated with this function will be considerably reduced, allowing agency resources to be devoted to other administrative responsibilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 300,000 unemployed workers each year will be affected by this regulation; the proposed amendment regarding remote filing options will of these workers in the time and cost associated with their application for unemployment insurance benefits. Over 80,000 businesses, organizations and governmental entities covered by the unemployment insurance program will be indirectly affected in that the proposed amendment regarding remote filing options will enable the agency to redirect resources into services to these entities. An unknown number of employers may choose to file claims on behalf of their workers, as authorized by the proposed amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The primary beneficiaries of the proposed amendment will be the more than 300,000 Kentuckians who each year become unemployed and make application for unemployment insurance benefits. By eliminating the need for most of these workers to travel to an office of the Department for Employment Services in order to apply for benefits, the proposed amendment will save these workers considerable time and cost at a period when they are already experiencing financial distress. Tangentially, the employers covered by the unemployment insurance program will also benefit in that agency resources can be redirected from unemployment claim processing to other activities serving these entities.

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

(a) Initially: The proposed amendment regarding remote filing options is being implanted as part of a multiyear reengineering effort with an estimated total cost of $20 million, though it must be noted that numerous other agency processes have also been affected by this effort and this cost is not associated solely nor totally with the proposed amendment.

(b) On a continuing basis: Implementing remote unemployment benefit application by internet and telephone is estimated to cost between $2 and $3 million per year, though it must be noted that some of this cost is associated with software maintenance and other fees that support other agency activities as well as remote application. Note also that this is the gross cost and not the net after considering agency staff savings (which will be redeployed to other activities).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The ongoing administration of the unemployment insurance program is fully funded by the U.S. Department of Labor from revenue derived from the Federal Unemployment Tax imposed on covered employers. The business process re-engineering effort that led to the internet and telephone application options contemplated in the proposed amendment was funded from revenue derived from the Service Capacity Upgrade Fund established under KRS 341.243.

(7) Provide an assessment of whether an 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 expected to be necessary for the implementation of the proposed amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor affects any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to the application of this regulation since it potentially benefits all unemployed workers equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of local government, including any service provided by that local government? Yes.

2. State what unit, part, or division of local government this administrative regulation will affect: This administrative regulation affects local governments covered by KRS Chapter 341 only insofar as it provides an option for them to file electronic claims on behalf of workers. This is an option only and there is no mandate for any local government to take any action under this regulation or amendment.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable law or federal state or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation: This administrative regulation relates to local governments only insofar as they may be covered employers under the provisions of KRS Chapter 341, and may choose to file electronic claims on behalf of their workers. KRS 341.115(1) authorizes the Secretary of the Cabinet for Workforce Development to promulgate regulations necessary for the administration of the unemployment insurance program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full fiscal 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.

Revenues(+/-): None
Expenditures (+/-): None (see below)

Other Explanation: This administrative regulation has no effect on the expenditures and revenue of local governments, except insofar as a local government may choose to file electronic claims on behalf of workers. In this case, a local government may incur some cost for programming or preparation of the electronic files, however this would be an elective expenditure and is expected to be minor.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:304. Exit routes, emergency action plans, and fire prevention plans. [Means of egress.]

RELATES TO: KRS Chapter 338 [338.051, 338.055, 29 C.F.R. Part 1910

STUTATORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [and 338.051 authorizes] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations. KRS 338.051(2) authorizes the board [Express authority] to incorporate by reference established federal standards and national consensus

- 705 -
standards. This [ sic] also given to the board. The following administrative regulation establishes exit route, emergency action plan, and fire prevention plan standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
(3) "Employee" is defined in KRS 338.015 [ sic] means any person employed except those employees excluded in KRS 338.021.
(4) [ sic] "Employer" is defined in KRS 338.015 [ sic] means any entity for whom a person is employed except those employers excluded in KRS 338.021.
(5) "NFPA" means the National Fire Protection Association.
(6) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Occupational Safety and Health Program.
(7) [ sic] "Established federal standard" means any occupational safety and health standard established by any agency of the United States Government.
(8) "National consensus standard" means any occupational safety and health standard or modification thereof which has been developed and promulgated by a nationally recognized standards producing organization.
(9) "Standard" is defined in KRS 338.015 [ sic] means a standard which requires conditions or the adoption or use of one (1) or more practices, methods, techniques, or activities, reasonably necessary or appropriate to provide safe and healthful employment, and includes the words "regulation" and "rules.
(10) "An employer, required-under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601."

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions established in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The revisions to 29 C.F.R. 1910.33 through 29 C.F.R. 1910.39 and Appendix, as published in the November 7, 2002 Federal Register, Volume 67, Number 213, are incorporated by reference. The following material is incorporated by reference:
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration, [ obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m. (ET), Monday through Friday.]

JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: August 14, 2003
FILED WITH LRC: August 15, 2002 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 p.m. (ET) September 15, 2003, five (5) working days prior to the hearing being 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 transcription is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Charles N. Stribling, Jr., ASP, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Stribling
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, in Section 3, incorporates by reference revisions published in the November 7, 2002 Federal Register, Volume 67, Number 216, pages 67961-67964, which revises 29 C.F.R., Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans." The purpose of the Subpart E revision was to rewrite the standards in clearer language so they are easier to understand by employers, employees, and others who use the standards. It neither directly increases nor decreases the protection afforded to employers nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards. Additionally, a table of contents was added that is intended to make the standards easier to use. The name of the subpart was changed from "Means of Egress" to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to better describe the contents. An evaluation of the National Fire Protection Association's Standard 101, Life Safety Code, 2000 Edition (NFPA 101-2000) was conducted and concluded that the standard provides comparable safety to the Exit Routes Standard. Therefore, employers who wish to comply with the NFPA 101-2000 instead of the Subpart E standards may do so. This amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). Having already adopted OSHA's former standards on means of egress, emergency action plans, and fire prevention plans, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our standards regarding means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the new standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 3, incorporates by reference a November 7, 2002, Federal Register publication, Volume 67, Number 216, pages 67561-67564, which revises 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans." The purpose of the revision was to rewrite the existing requirements in clearer language so they will be easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies, clarified some sections, and eliminated duplicated requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards. Additionally, a table of contents has been added that is intended to make the standards easier to use. Also, the name of the subpart is changed from "Means of Egress" to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to better describe the contents. An evaluation of the NFPA 101-2000 was conducted and concluded that the standard provides comparable safety to the Exit Routes Standard. Therefore, employers who wish to comply with the NFPA 101-2000 instead of the Subpart E standards for Exit Routes may do so. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation upon its incorporation by reference to the C.F.R. to July 1, 2001.

(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within 6 months of the promulgation date of the federal standard. Having already adopted OSHA's former standards on means of egress, emergency action plans, and fire prevention plans, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, OSHA specifically encouraged Kentucky to revise our standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted the new standards.

The amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. These amendments affect all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the 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: Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation. This change will have little anticipated impact in Kentucky. The amendment applies to general industry.

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

(a) Initially: There will be no initial cost to implement this administrative regulation, this amendment imposes no additional costs on any private or public sector entity. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 19(c)(2).

2. State compliance standards. This amendment incorporates revisions published in the November 7, 2002 Federal Register to federal regulations incorporated by reference in 803 KAR 2.304 addressing exit routes, emergency action plans, and fire prevention plans. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and updates the incorporation by reference of the C.F.R. to July 1, 2001.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 3, incorporates by reference revisions published in the November 7, 2002 Federal Register, Volume 67, Number 216, pages 67561-67564, which revises 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans." This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the incorporation by reference of the C.F.R. to July 1, 2001.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. Certain provisions of this amendment add flexibility and may even reduce costs for employers. Employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revisions impose no stricter, additional, or different responsibilities than the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. The amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates
the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 803 KAR 2:307. In addition to KRS 338.016(6), the Occupational Safety and Health Act of 1970 - Section 18 (g)(1), 29 C.F.R. 1902.11(e) and 1902.11(f)(1) authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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.

Revenues (+): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Local governments may find it easier to comply with this amendment because it is more performance-oriented than the former regulation. This amendment imposes no additional costs on any public sector entity. Certain provisions of the amendment add flexibility and may even reduce costs for public sector employers. This amendment replaces the former standards regulating means of egress, emergency action plans, and fire prevention plans. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers’ compliance obligations. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)


RELATES TO: KRS Chapter 338 [338.051(3), 338.061], 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [and 338.061 authorizes] the Kentucky Occupational Safety and Health Standards Board to [adopt] and promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to [provide that the board] may incorporate by reference established federal standards and national consensus standards. This [is also given to the board]. The following [administrative regulation establishes hazardous material] contains these standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions [Applicable to this Part]. (1) "Fact" means KRS Chapter 338.

(2) "Assistant secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" is defined in KRS 338.015.

(4) "Employer" is defined in KRS 338.015.

(5) "Standard" is defined in KRS 338.015.

(6) "Subject to" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 4 of this administrative regulation as modified by Sections 1 and 3 of this administrative regulation.

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) [Automotive Service Station (Service Station). (1) The language relating to automotive service stations (service stations) in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(4).

(3) 29 C.F.R. 1910.106(a)(3) is amended to read: The term "Automotive service station, or service station, means [stations, shall mean] that portion of property where flammable or combustible liquids used as motor fuels [are] are stored and dispensed from fixed equipment [and] into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service [service] of tires, batteries, and accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

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

(a) 29 C.F.R. 1910.101 through 1910.106(a)(2), revised as of July 1, 2001;

(b) 29 C.F.R. 1910.106(a)(4) through 1910.1910, revised as of July 1, 2001; and


(3) The additions to 29 C.F.R. 1910.121-126, dealing with dipping and coating operations, as published in the Federal Register, Volume 64, Number 55, March 23, 1999, are incorporated by reference.

(4) The language relating to automotive service stations (service stations) in subsection (2) of this administrative regulation shall apply in lieu of 29 C.F.R. 1910.106(a)(4).

(5) [5] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [office of the] and copied from the Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(6) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration. [Office hours are 8 a.m. to 4:30 p.m. (ET), Monday through Friday.]

JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: August 14, 2003
FILED WITH LRC: August 15, 2002 at 10 a.m.
PUBLIC HEARING PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 p.m. (ET) September 15, 2003, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Charles N. Stribley, Jr., ASP.
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Stirling

(1) Provide a brief summary of:

(a) What this administrative regulation does: The amendment to this administrative regulation, in Section 4, incorporates by reference revisions to federal regulations in 29 C.F.R. 1910.119 and 1910.120, published in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67964. This amendment is necessary due to the plain language redrafting to the standards regulating 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans", published in the same November 7, 2002 Federal Register. As a result of the Subpart E redrafting, the standard cites in Subpart E changed. Subsequently, the references to Subpart E found in 29 C.F.R. 1910.119 and 1910.120 in the old administrative regulation require updating. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). Having already adopted OSHA's former 29 C.F.R. 1910.119, 1910.120, and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Board adopted the new Subpart E standards and updated cite references to Subpart E found in 29 C.F.R. 1910.119 and 1910.120.

(c) How this administrative regulation is incorporated into this administrative regulation require updating. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 4, incorporates by reference revisions in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67964, which updates the cite references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans," found in 29 C.F.R. 1910.119 and 1910.120. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.

(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within 6 months of the promulgation date of the federal standard. Having already adopted OSHA's former 29 C.F.R. 1910.119, 1910.120, and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Board adopted the new Subpart E standards and cite references to Subpart E found in 29 C.F.R. 1910.119 and 1910.120.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency with the federal standard.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the 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: This amendment will have no impact in Kentucky. This amendment only updates the cite references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.119 and 1910.120. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.

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

(a) Initially: There will be no initial cost to implement this administrative regulation. This amendment imposes no initial cost to any private or public sector entity.

(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This amendment incorporates revisions published in the November 7, 2002 Federal Register to federal regulations incorporated by reference in 803 KAR 2:307. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and updates the incorporation by reference of the C.F.R. to July 1, 2001.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 4, incorporates revisions published in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67964, which updates 29 C.F.R. Part 1910.119 and 1910.120. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the incorporation by reference of the C.F.R. to July 1, 2001.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, - 709 -
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than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers’ compliance obligations. This amendment only updates the cited references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.119 and 1910.120.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revisions impose no stricter, additional, or different responsibilities than the federal standards. This amendment only updates the cited references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.119 and 1910.120.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. The amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 803 KAR 2:050, Pub.L. 91-256, the Occupational Safety and Health Act of 1970 - Section 18(c)(6), 29 C.F.R. 1952.11(a), and 1952.11(b)(1) authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: This amendment only updates the cited references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.119 and 1910.120. This amendment imposes no additional costs on any public sector entity. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers’ compliance obligations. This amendment will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:311. Fire protection.

RELATES TO: KRS Chapter 338 [338.051(3), 338.064], 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes (and 338.061 authorizes the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to [promulgate occupational safety and health administrative regulations].

incorporate by reference established federal standards and national consensus standards. This is also given to the board. The following administrative regulation establishes fire protection (contains these) standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions [Applicable to this Part]. (1) "Act" means KRS Chapter 338.

(2) "Assistant secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" is defined in KRS 338.015, means any person employed except those employees excluded in KRS 338.021.

(4) "Employee" is defined in KRS 338.015, means any entity for whom a person is employed except those employees excluded in KRS 338.021.

(5) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Occupational Safety and Health Program.

(6) "Standard" is defined in KRS 338.015.

(7) "Established federal standard" means any occupational safety and health standard established by any agency of the United States Government.

(8) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards producing organization.

(9) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule.

(10) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40604, or the U.S. Department of Labor.

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

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


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [obtained and copied at] Kentucky Labor Cabinet, Division of Education and Training, U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration, Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: August 14, 2003
FILED WITH LRC: August 15, 2002 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 p.m. (ET) September 15, 2003, five (5) working
days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Charles N. Stirling, Jr., ASP, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Stirling

(1) Provide a brief summary of:
(a) What this administrative regulation does: The amendment to this administrative regulation, in Section 3, incorporates changes to federal regulations in 29 C.F.R. 1910.157, published in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67964. This amendment is necessary due to the plain language redrafting to the standards regulating 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans," published in the same November 7, 2002, Federal Register. Subpart E of this standard is not being redrafted, the citation for this Subpart E remains unchanged. Therefore, the references to Subpart E found in 29 C.F.R. 1910.157 in this administrative regulation require updating. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.
(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). Having already adopted OSHA's former 29 C.F.R. 1910.157 and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Board adopted the new Subpart E standards and updated cited references to Subpart E found in 29 C.F.R. 1910.157.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 3, incorporates by reference revisions in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67964, which updates the cited references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans," found in 29 C.F.R. 1910.157. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001. The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the federal standard. Having already adopted OSHA's former 29 C.F.R. 1910.157 and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Board adopted the new Subpart E standards and cite references to Subpart E found in 29 C.F.R. 1910.157.

(3) How the amendment conforms to the content of the authorizing statute: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(4) How the amendment will assist in the effective execution of the statute: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency with the federal standard.

(5) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(6) How the amendment is assessed by the OSHA, the C.F.R., or the statutorily designated body: This amendment is assessed by the OSHA, the C.F.R., or the statutorily designated body.

(7) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment affects all employers in Kentucky. This amendment updates the cited references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans," found in 29 C.F.R. 1910.157. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.

(8) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no initial cost to implement this administrative regulation. This amendment imposes no initial cost to any private or public sector entity.
(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(10) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at facilities that pose higher risk to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.
date. This amendment, in Section 3, incorporates revisions published in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67964, which revises 29 C.F.R. Part 1910.157. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the incorporation by reference of the C.F.R. to July 1, 2001.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers’ compliance obligations. This amendment only updates the cite references to 29 C.F.R. Part 1910, Subpart E, “Exit Routes, Emergency Action Plans, and Fire Prevention Plans” found in 29 C.F.R. 1910.157.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revisions impose no stricter, additional or different responsibilities than the federal standards. This amendment only updates the cite references to 29 C.F.R. Part 1910, Subpart E, “Exit Routes, Emergency Action Plans, and Fire Prevention Plans” found in 29 C.F.R. 1910.157.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. The amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this regulation may relate to any aspect or service of local government. KRS 338.011, KRS 338.021, 803 KAR 2:050, 913.506, the Occupational Safety and Health Act of 1970 - Section 18(c)(6), 29 C.F.R. 1952.11(b)(a), and 1952.11(b)(1) authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: This amendment only updates the cite references to 29 C.F.R. Part 1910, Subpart E, “Exit Routes, Emergency Action Plans, and Fire Prevention Plans” found in 29 C.F.R. 1910.157. This amendment imposes no additional costs on any public sector entity. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers’ compliance obligations. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:317. Special industries.

RELATES TO: KRS Chapter 338 [338.051, 338.061], 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [and 338.081 authorizes] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations. KRS 338.081(10) authorizes the board to [provide that the board may] incorporate by reference established federal standards and national consensus standards. This is also given to the board. The following administrative regulation establishes [contains those] standards to be enforced by the Division of Occupational Safety and Health Compliance in [the area of] general industry.

Section 1. Definitions [Applicable to this Part]. (1) "Facility" means KRS Chapter 338.
(2) "Assistant secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
(3) "Employee" is defined in KRS 338.015.
(4) "Employer" is defined in KRS 338.015.
(5) "Facility" is defined in KRS 338.015. [Means any person employed except those persons excluded in KRS 338.031.
(6) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
(7) "Established federal standard" means any applicable occupational safety and health standard established by any agency of the United States Government.
(8) "National consensus standard" means any applicable occupational safety and health standard, or modification thereof, which has been adopted and promulgated by a nationally recognized standards producing organization.
(9) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes "regulation" and "rule."
(10) "U.S. Department of Labor" means United States Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) 29 C.F.R. 1910.261 through 29 C.F.R. 1910.272 and Appendices, revised as of July 1, 2001; and

(2) This material may be inspected, copied, or obtained, subject
to applicable copyright law, at the [and copied at] Kentucky Labor Cabinet, Division of Education and Training, U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration. [Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: August 14, 2003
FILED WITH LRC: August 15, 2002 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 p.m. (ET) September 15, 2003, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Anyone who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Charles N. Stirling, Jr., ASP, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charles Stirling
(1) Provide a brief summary of:
(a) What this administrative regulation does: The amendment to this administrative regulation, in Section 3, incorporates changes to federal regulations in 29 C.F.R. 1910.268 and 1910.272, published in the November 7, 2002 Federal Register, Volume 67, Number 216, pages 67964 and 67965. This amendment is necessary due to the plain language redrafting to the standards regulating 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans", published in the same November 7, 2002 Federal Register. As a result of the Subpart E redrafting, the standard cites to Subpart E are modified. The references to Subpart E found in 29 C.F.R. 1910.268 and 1910.272 incorporated in this administrative regulation require updating. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.
(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1910, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). Having already adopted OSHA's former 29 C.F.R. 1910.268, 1910.272, and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Board adopted the new Subpart E standards incorporating the references to Subpart E found in 29 C.F.R. 1910.268 and 1910.272.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 3, incorporates by reference revisions in the November 7, 2002 Federal Register, Volume 67, Number 216, pages 67964 and 67965, which updates the cite references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans," found in 29 C.F.R. 1910.268 and 1910.272. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.
(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within 6 months of the promulgation date of the federal standard. Having already adopted OSHA's former 29 C.F.R. 1910.268, 1910.272, and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Board adopted the new Subpart E standards and cite references to Subpart E found in 29 C.F.R. 1910.268 and 1910.272.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency with the federal standard.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or the change, if it is an amendment: This amendment will have no impact in Kentucky. This amendment only updates the cite references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.268 and 1910.272. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2001.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no initial cost to implement this administrative regulation. This amendment imposes no initial cost to any private or public sector entity.
(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at facilities that present higher risks to worker safety and health at or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This amendment incorporates revisions published in the November 7, 2002 Federal Register to federal regulations incorporated by reference in 803 KAR 2:317. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and updates the incorporation by reference of the C.F.R. to July 1, 2001.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 3, incorporates revisions published in the November 7, 2002 Federal Register, Volume 67, Number 216, pages 67964 and 67965, which revises 29 C.F.R. Part 1910.268 and 1910.272. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the incorporation by reference of the C.F.R. to July 1, 2001.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment only updates the cite references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.268 and 1910.272.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revisions impose no stricter, additional, or different responsibilities than the federal standards. This amendment only updates the cite references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.268 and 1910.272.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part, or division of local government this administrative regulation will affect. The amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 803 KAR 2:050, Pub.L. 91-596, the Occupational Safety and Health Act of 1970 - Section 18(c)(5), 29 C.F.R. 1952.11(a), and 1952.11(b)(1) authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government 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.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:320. Air contaminants.

RELATES TO: KRS 338.031, 338.051, 29 C.F.R. 1910.1000-.1500
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1910.1000-.1500
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) μ particles.

(2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(3) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(4) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned to that area by the employer.

(5) "Clean change room" means a room where employees put on cleaning clothing or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline).

(6) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, non-regulated areas, or the external environment.

(7) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(8) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health, Education, and Welfare to act for the director.

(9) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(10) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure or contact with 4,4'-Methylene bis (2-chloroaniline).

(11) "External environment" means any environment external to regulated and nonregulated areas.

(12) "Employee" is defined in KRS 338.015(2).

(13) "Employer" is defined in KRS 338.015(1).

(14) "Established federal standard" is defined in KRS 338.015(10).

(15) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is imperious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of con-
tainment occurs.

(19) "Laboratory type hood" means a device enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than his hands and arms.

(20) "National consensus standard" is defined in KRS 338.015(3).

(21) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(22) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(23) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(24) "Regulated area" means an area where entry and exit is restricted and controlled.

(25) "Standard" is defined in KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to transfer-in shipments to in sealed containers, except for the labeling requirements under subsection (2)(a), (b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into another normally closed containers, the provisions of this paragraph shall apply:

1. Access shall be restricted to authorized employees only.
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, hoods, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;
2. Be decontaminated before removing the protective garments and hood;
3. Be required to shower upon removing the protective garments and hood;
4. Be required to shower after the last exit of the day.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.
2. Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.
3. Surfacas on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.
4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.
5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.
6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and
b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section;
c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and
7. Required to shower after the last exit of the day.
8. Employees, except for those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;
b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or
disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and (4) Required to wash hands, forearms, face, and neck upon each visit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4′-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4′-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modifications or maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4′-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required; except:

1. Only authorized employees shall be permitted to handle the materials.
2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;
3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or when solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;
4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;
5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c) of this section; and
6. Work areas where solution may be spilled shall be:
   a. Covered daily or after any spill with a clean covering; and
   b. Cleaned thoroughly daily and after any spill.

3. General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The roster or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has known contact with 4,4′-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4′-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

4. Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

   CANCER-SUSPECT AGENT
   Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (2)(e) of this section shall be posted with signs bearing the legend:

   Cancer-Suspect Agent Exposed in This Area
   Impervious Suit Including Gloves, Boots, and Air-Supplied Hood
   Required At All Times
   Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4′-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)(5), (f)(7), and (g)(3) of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4′-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)(5), (f)(7), and (g)(3) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e) of this subsection shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4′-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of the hazards, and noting, if appropriate, particularly sensitive or affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any
instance; except that the required lettering shall not have to be more than one (1) inch in height.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.
1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:
   a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;
   b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;
   c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;
   d. The purpose for and application of decontamination practices and procedures;
   e. The purpose for and significance of emergency practices and procedures;
   f. The employee's specific role in emergency procedures.
2. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline); and
3. The purpose for and application of specific first-aid procedures and practices.
2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.
3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms, and rehearsed in their application.
4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.
(a) Operations. Not later than March 1 of each year, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing by the employer to the nearest OSHA Area director. Any change in the information shall be similarly reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:
1. A brief description and in-plant location of the areas regulated and the address of each regulated area;
2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;
3. The number of employees in each regulated area, during normal operations including maintenance activities; and
4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.
(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.
1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest OSHA Area Director.
2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days of the initial report and shall include:
   a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;
   b. A description of the area involved, and the extent of known and possible employee and area contamination;
   c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and
   d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.
(5) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.
(a) Examinations.
1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.
2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.
3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.
(b) Records.
1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the OSHA Area Director. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director, and if requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.
3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003-1016.
(1) Mechanical pipetting aids shall be used for all pipetting procedures.
(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.
(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003-1016 are handled shall be protected from contamination.
(4) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated so that no carcinogenic products are released.
(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003-1016 shall be inactivated prior to disposal.
(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.
(7) Employees engaged in animal support activities shall be:
   a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;
   b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day. The place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of such impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;
   c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and
   d. Required to shower after the last exit of the day.
(8) Employees, except those engaged only in animal support activities, each day shall be:
   a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;
   b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in...
impervious containers at the point of exit for decontamination or disposal. The contents of such impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation.

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

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003-1016 are handled and biobehavioral studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.


(12) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) 29 C.F.R. 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless such delay is reasonable.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) 29 C.F.R. 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either.

Section 5. (1) The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(x);

(2) Gloves shall be worn when it is reasonably anticipated that employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 2002 [2000].


(f) The revisions to 29 C.F.R. Part 1910.1043, as published in the Federal Register, Volume 66, Number 67, April 6, 2001.] (2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5(2) of this administrative regulation shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(x).

(5) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: August 14, 2003
FILED WITH LRC: August 15, 2002 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals wishing to be heard at this hearing shall notify this agency in writing by 4:30 p.m. (ET) September 15, 2003, five (5) working days prior to the hearing, of their intent to attend. Written notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Tim Chancellor, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1862.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tim Chancellor

(1) Provide a brief summary of:

(a) What this administrative regulation does: The amendment to this administrative regulation, in Section 3, incorporates changes to federal regulations in 29 C.F.R. 1910.1047, 1910.1050, and 1910.1051, published in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67965. This amendment is necessary due to the plain language redrafting of the standards regulating 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans", published in the same November 7, 2002 Federal Register. As a result of the Subpart E redrafting, the standard cites in Subpart E changed. Subsequently, the references to Subpart E found in 29 C.F.R. 1910.1047, 1910.1050, and 1910.1051 incorporated in this administrative regulation require updating. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2002.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). Having already adopted OSHA's former 29 C.F.R. 1910.1047, 1910.1050, 1910.1051, and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards regulating means of egress, emergency action plans, and fire prevention plans according to the November 7, 2002 final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the Board adopted the new Subpart E standards and updated the references to Subpart E found in 29 C.F.R. 1910.1047, 1910.1050 and 1910.1051.

(c) How this administrative regulation conforms to the content of
the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 3, incorporates by reference revisions in the November 7, 2002 Federal Register, Volume 67, Number 216, pages 67964 and 67965, which updates the cites references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans," found in 29 C.F.R. 1910.1047, 1910.1050 and 1910.1051. This amendment neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2002.

(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1910.1053.23 requires state implementation of the new federal standard, or a more stringent amendment, within 6 months of the promulgation date of the federal standard. Having already adopted OSHA's former 29 C.F.R. 1910.1047, 1910.1050, 1910.1051, and Subpart E standards, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this revision. However, OSHA specifically encouraged Kentucky to revise our Subpart E standards to reflect the means of egress, action plans, and fire prevention plans according to the November 7, 2002, final rule. To ensure consistency and provide employers and employees with a clear understanding of the requirements, the board adopted the new Subpart E standards and updated cited references to Subpart E found in 29 C.F.R. 1910.1047, 1910.1050 and 1910.1051.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. This amendment ensures consistency with the federal standard.

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: This amendment affects all private sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have no impact in Kentucky. This amendment only updates the cites references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.1047, 1910.1050 and 1910.1051. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this administrative regulation, which affects general industry, updates the incorporation by reference of the C.F.R. to July 1, 2002.

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

(a) Initially: There will be no initial cost to implement this administrative regulation. This amendment imposes no initial cost to any private or public sector entity.

(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-556, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This amendment incorporates revisions published in the November 7, 2002 Federal Register, Volume 67, Number 216, page 67965, which revises 29 C.F.R. Part 1910.1047, 1910.1050, and 1910.1051. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the incorporation by reference of the C.F.R. to July 1, 2002.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment only updates the cites references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.1047, 1910.1050, and 1910.1051.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revisions impose no stricter, additional, or different responsibilities than the federal standards. This amendment only updates the cites references to 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" found in 29 C.F.R. 1910.1047, 1910.1050, and 1910.1051.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. The amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this regulation may relate to any aspect or service of local government. KRS 338.011, 338.021, 803 KAR 2:05O, Pub.L. 91-556, the Occupational Safety and Health Act of 1970 - Section 18(c)(6), 29 C.F.R. 1952.11(a), and 1952.11(b)(1) authorize the action taken by this administration regulation on the expenditures and revenues of a local government for the first full
PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

810 KAR 1:027. Entries, subscriptions, and declarations.

STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMANCE: KRS 230.260 grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish requirements for entry, subscription and declaration of thoroughbred horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person authorized by either.
(2) "Scratch" means withdrawal of a horse entered from a race, after closing, by the owner, trainer, or person authorized by either.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been and continues to be duly entered in a race. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of same for a period of one (1) year.
(2) An entry shall be in the name of a horse's licensed owner as completely disclosed and registered with the racing secretary under these administrative regulations and made by the owner, trainer, or a licensed authorized agent of the owner or trainer.
(3) An entry shall be in writing or by telephone to the racing secretary. Telephone entries 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. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate.
(a) A horse not race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.
(b) Establishing identity of a horse shall be the responsibility of its owner and of any other person seeking to certify the identity of the horse. Persons shall be subject to appropriate disciplinary action for incorrect identification.
(c) Horses requiring the use of medication, drugs or substances to prevent or control induced pulmonary hemorrhaging (EIPH)/bleeding, shall be registered with the commission veterinarian. Horses so registered shall remain, and removal shall require commission veterinarian approval. After inclusion, additional notification shall not be required. Horses which are not properly registered shall not be permitted to race with antbleeder medications, drugs, or substances. Registration shall be made prior to entry. The racing program shall indicate usage.
(5) Alterations, except an error corrected with the permission of the stewards, shall not be made in an entry after the closing of entries.
(6) A horse shall not be entered in two (2) races to be run on the same day.
(7) A horse which 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 of the meeting.
(a) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) which is within twenty (20) days of entry.
(b) If a horse has done the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing.
(c) The workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race.
(d) A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. Entries shall not be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. Limitation as to Spouses. Entries in a race shall not be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse is under license suspension at the time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the duly licensed spouse of the suspended jockey.

Section 6. Mutuel Entries. (1) No more than two (2) horses having common ties through training shall be entered in a purse race.
(a) Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest, except as provided in subsection (b) and (c) of this section.
(b) 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 (2) of this section.
(c) No more than two (2) horses having common ties through ownership shall [or training] be joined as a mutuel entry shall be entered in a purse race. When 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) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purses races where the number of starters is four (4) or less, two (2) horses having common ties through training shall not start to the exclusion of a single entry.
(5) In thoroughbred stakes races with added money of $100,000 or more, permission may be granted by the stewards to uncouple mutuel entries of horses sharing common ties through training or ownership or both, which are owned by different owners.
(6) In allowance races, permission may be granted by the stewards to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners, to create six (6) separate betting interests. In the event more than one (1) mutuel entry is uncoupled, part mutuel wagering on daily double, exacta, quinella, or other wagering allowed by statute shall be prohibited.
(7) In thoroughbred stakes races with gross purses of $1,000,000 or more, permission may be granted by the stewards to uncouple mutuel entries of horses sharing common ties through training or ownership or both.
Section 7. Subscriptions. (1) Any subscriber to a stakes race may transfer or declare a subscription prior to closing.

(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 when 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 a stakes race. (4) Death of a nominated 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, or 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 or otherwise disqualified to race, or to enter it, 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 8. 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 case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) If the hour of closing is not specified for stakes races, subscriptions and declarations may be accepted until midnight of the day of closing provided, they are received in time for compliance with every other condition of the race.

(3) Entries which have closed shall be compiled without delay by the racing secretary and along with declarations, shall be posted.

Section 9. 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 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 which, in the opinion of the stewards, 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 claiming race and a maiden race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(3) A claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other claiming races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(4) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2), the association may cancel or declare off the race. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When 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 in the absence of specific prohibition by the following conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the mutuel entry, at the time of the entry, indicates such 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, or sex, or both.

(c) Entries for any split race not divided by any method provided for in the administrative regulations, 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 11. Post Positions. (1) Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the race.

(2) Post positions in split races also shall be determined by lot in the presence of those making the entries for the split race.

(3) The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 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, a new drawing shall be taken as to horses on the also-eligible list.

(3) The starting and post position of horses drawn from the also-eligible list shall be determined by the sequence draw, unless otherwise stipulated in the published conditions of the race.

(4) 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.

(5) If entries are closed two (2) racing days prior to the running of a race, a horse on an also-eligible list that has been drawn into a race as a starter for the succeeding day, shall not be permitted to run in the race for which it had been listed as also-eligible.

Section 13. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programmed 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 also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 15. 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 16. Scratches. Scratches shall be irrevocable and shall
be permitted under the following conditions:

(1)(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 up until fifteen (15) minutes prior to post time for the race preceding the stakes race by filing written notification of an intention to scratch with the racing secretary. 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 same to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excused without a valid physical reason.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutual entry in a purse race shall be made at or before the posted 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 purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests in any other purse race, remain in the race after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to respective minimum numbers for the races may be made. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Horses that have [entry of a horse which 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's list for six (6) calendar days, or until such time as the horse is declared sound by a veterinarian. Horses that have been scratched or excused because of a physical disability or sickness shall remain on the commission's veterinarian's list for six (6) calendar days, or until such time as the horse is declared sound by a veterinarian.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or such publication as the commission may deem appropriate to protect the public and the racing industry, and 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.

C. FRANK SHOOP, Chairman
APPROVED BY AGENCY: July 30, 2003
FILED WITH LRC: August 1, 2003 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, 10 a.m. at the office of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. Transcripts 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 October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bambi Todd
(1) Provide a brief summary of:

(a) What the administrative regulation does: the function of this administrative regulation is to establish requirements for entry, subscription, and declaration of horses in order to race.

(b) The necessity of the administrative regulation: This administrative regulation sets the guidelines on how individuals enter their thoroughbred horses at Kentucky tracks.

(c) How the administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky.

(d) How the administrative regulation currently assists or will assist in the effective administration in the statutes: This administrative regulation provides all the information concerning the entering a thoroughbred horse in race; how the entry is to be made; information requested with the entry; medications; mutual entries; also-eligible lists; and the length of time a horse stays on the commission's veterinarian list after being scratched or excused from racing.

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

(a) How the amendment will change the existing administrative regulation: The main proposed amendment places 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's list for six (6) calendar days instead of 3 days. The other proposed amendments are cleaning up language that is duplicated within this administrative regulation.

(b) The necessity of the amendment of the administrative regulation: By increasing the days a scratched or excused horse must remain on the commission's veterinarian list will give the horse more time to recover from the disability or illness.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260 grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: It will clarify the language pertaining to horses joined as a mutual entry and as a single betting interest.

(3) List the type and number of individuals, businesses, organizations, or state and local government agencies affected by the administrative regulation: Individuals having horses that have been scratched or excused from starting by the stewards because of physical disability or illness.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: Horses which have been scratched or excused from starting by the stewards because of physical disability or sickness, shall be placed on the commission's veterinarian list for 6 calendar days.

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

(a) Initially: No cost to implement this administrative regulation.

(b) On a continuing basis: Same as initially.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be needed to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The main proposed amendment places 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 6 calendar days instead of 3 days. The other proposed amendments are cleaning up language that is duplicated.
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

CABINET FOR HEALTH SERVICES
Office of the Inspector General
(Amendment)

906 KAR 1:120. Informal dispute resolution.

RELATES TO: 42 C.F.R. 488.301, 488.331
STATUTORY AUTHORITY: KRS 134.050(1), 42 C.F.R. 488.331
NECESSITY, FUNCTION, AND CONFORMITY: 42 C.F.R.
488.331 requires the cabinet to establish an informal dispute resolution
process to be used by a provider to informally dispute a finding
of deficiency at a nursing facility or skilled nursing facility. This
administrative regulation establishes the informal dispute resolution
process and expands the process to all long-term care facilities.

Section 1. Definitions. (1) "CMS" means the Centers for Medi-
care and Medicaid [and Medicare] Services.

(2) "Deficiency" means a failure to meet either a state licensure
requirement or a federal requirement for participation in the Medi-
care or Medicaid Program.

(3) "Enforcement action" means a remedy applied to effect
prompt compliance by a provider with program requirements.

(4) "IDS" means informal dispute resolution.

(5) "IDR coordinator" means a CMS-certified surveyor employed
by the Office of Inspector General, Division of Long-term Care, des-
ignated by the Director of the Division of Long-term Care to serve as
the IDR coordinator.

(6) "Immediate jeopardy" is defined as 42 C.F.R. 488.301.

(7) "Inspector general" means the inspector general or his des-
ignee.

(8) "Plan of correction" means a description of actions by a pro-
vider to correct a deficiency.

(9) [48] "Provider" means a "long-term care facility" as defined in
KRS 216.510.

(10) [49] "Scope and severity assessment" means the letter
designation assigned to a federal deficiency to represent the level of:

(a) Actual or potential impact to resident outcome; and

(b) Number of residents affected.

(11) [449] "Statement of deficiencies" means the written notifi-
cation to the provider describing how the provider fails to meet
regulatory requirements.

(12) [444] "Substandard quality of care" is defined as 42 C.F.R.
488.301.

Section 2. Request for Informal Dispute Resolution. (1) A pro-
vider shall have one (1) opportunity to informally dispute a cited
deficiency or scope and severity assessment that constitutes sub-
standard quality of care or immediate jeopardy.

(2) The provider requesting an informal dispute resolution shall
select one (1) of the following appropriate formats:

(a) A desk review which shall be available for a cited deficiency;

(b) A telephone conference review which shall be available for a
cited deficiency; or

(c) A panel review which shall be available for:

1. A cited deficiency with a scope and severity assessment of G,
H, I, J, K, or L;

2. A cited deficiency with a scope and severity assessment that
corresponds to a substandard quality of care;

3. A cited deficiency that results in an enforcement action by the
Cabinet for Health Services;

4. A federal deficiency cited at the condition level; or

5. A disputed deficiency cited in conjunction with a deficiency
qualifying for a panel review.

(3) A provider may request IDR upon receipt of the statement of
deficiencies.

(4) A request shall be in writing and shall:

(a) Specify the deficiency in dispute;

(b) Explain and provide a detailed basis for the dispute; and

(c) Specify the format desired.

(5) Unless the provider requests a five (5) calendar day exten-
sion pursuant to paragraph (c) of this subsection, documentation in
support of the provider's position shall be attached to the request.

(a) A provider requesting a panel review IDR shall submit five
(5) copies of the required documentation and shall:

1. Highlight or otherwise mark specific information pertinent to
the disputed deficiency; and

2. Annotate with the specific state licensure deficiency or federal
deficiency in dispute.

(b) A provider requesting a desk or telephone conference review
shall submit two (2) copies of the required documentation and shall:

1. Highlight or otherwise mark specific information pertinent to
the disputed deficiency; and

2. Annotate with the specific state licensure deficiency or federal
deficiency in dispute.

(c) A provider may request an additional five (5) calendar days
to provide documentation in support of their position by attaching a
statement requesting the five (5) calendar day extension to the re-
quest for IDR.

(d) Documentation not submitted at the time of the request for
IDR, or within a requested five (5) calendar day extension, shall not
be reviewed.

(6) The request and attachments shall be delivered, on or before
the mandated return date for the plan of correction, to the IDR coor-
dinator at the Office of Inspector General, Division of Long-term Care,
CHR Building, 275 East Main Street, 5E-A, Frankfort, Ken-
tucky 40621.

(7) A request for IDR shall not delay an enforcement action.

Section 3. Review Process. (1) The IDR coordinator shall re-
ceive and review each request for an IDR, and review if requested by
the provider;

(a) Conduct a desk review, if requested by the provider;

(b) Schedule a telephone conference review, if appropriate and
requested by the provider; or

(c) Schedule a panel review, if appropriate and if requested by
the provider.

(2) If a desk review is conducted, the IDR coordinator shall:

(a) Review documentation submitted by the provider; and

(b) Make a recommendation to the inspector general [determi-
nation] to:

1. Uphold the cited deficiency;

2. Modify the cited deficiency by deleting a finding;

3. Modify the cited deficiency by lowering the scope and severity
determination;

4. Modify the cited deficiency by changing the tag number; or

5. Delete the cited deficiency.

(3) If a telephone conference review is conducted, the IDR coor-
dinator shall:

(a) Review documentation submitted by the provider;

(b) Conduct a telephone conference call with the provider to:

1. Receive verbal comments relating to the disputed deficiency;

2. Seek answers to questions relating to the disputed deficiency;

3. Make a recommendation to the inspector general [determi-
nation] to:

1. Uphold the cited deficiency;

2. Modify the cited deficiency by deleting a finding;

3. Modify the cited deficiency by lowering the scope and severity
determination;

4. Modify the cited deficiency by changing the tag number; or

5. Delete the cited deficiency.

(4) If a panel review is conducted:

(a) The panel shall consist of:

1. The IDR coordinator serving as a nonvoting panel moderator;

2. Two (2) CMS certified surveyors who:

a. Are employed by the Office of Inspector General; and

b. Were not responsible for citing the deficiency in dispute; and

3. A person currently engaged in the provision of long-term care
services who has no affiliation with the provider disputing a defi-
cency.

(b) The members of the panel shall review documentation sub-
mitted by the provider prior to the panel review meeting;

(c) The panel review meeting shall not exceed one (1) hour;

(d) The provider may present additional oral information relating to
the disputed deficiency;

(e) A member of the survey team responsible for citing the dis-
puted deficiency may respond to the information presented by the
provider; [1]
(f) A panel member may ask questions of either the provider or
the survey team member;
(g) The provider may present an oral summary of its response to
a disputed deficiency;
(h) After the panel review meeting has concluded, the panel will
review all of the information presented relating to the disputed
deficiency;
(i) The voting members of the panel shall make a recommenda-
tion to the inspector general [determination] to:
1. Uphold the cited deficiency;
2. Modify the cited deficiency by deleting the finding;
3. Modify the cited deficiency by lowering the scope and severity
assessment;
4. Modify the cited deficiency by changing the tag number; or
5. Delete the cited deficiency.
(j) The inspector general shall make the final determination to:
(a) Uphold the cited deficiency;
(b) Modify the cited deficiency by deleting the finding;
(c) Modify the cited deficiency by lowering the scope and sever-
ity assessment;
(d) Modify the cited deficiency by changing the tag number; or
(e) Delete the cited deficiency.
(k) A determination made by the inspector general as a result of
the desk review, telephone conference, or panel review IDR shall be
mailed to the provider within thirty-five (35) working days of receipt
of a request for IDR.
(l) [43] If a cited deficiency was modified as a result of the in-
formal dispute resolution process the provider may request the Office
of Inspector General, Division of Long-term Care to provide:
(a) A copy of the statement of deficiencies indicating each modi-
ication by:
1. Striking through deleted language; and
2. Underlining new language; or
(b) A new statement of deficiencies containing the modified
deficiency. If a new statement of deficiencies is issued the provider
will be required to complete a new plan of correction.
(m) [24] If a cited deficiency was deleted the provider may re-
quest the Office of Inspector General, Division of Long-term Care to
provide:
(a) A copy of the statement of deficiencies indicating each dele-
tion; or
(b) A new statement of deficiencies absent the deleted defi-
cency. If the new statement of deficiencies contains other cited
deficiencies that were not deleted the provider shall be required to
complete a new plan of correction.

PAMELA J. MURPHY, Inspector General
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: July 29, 2003
FILED WITH LRC: August 14, 2003 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public
hearing on this administrative regulation shall be held on September
22, 2003, at 9 a.m., at the Health Services Auditorium, 1st Floor,
CHR Building. Individuals interested in attending this hearing shall
notify this agency in writing by September 15, 2003, of their intent
to attend. If no notification of intent to attend the hearing is received by
that date, the hearing may be canceled. The hearing is open to the
public. Any person who attends will be given an opportunity to com-
ment on the proposed administrative regulation. A transcript of the
public hearing will not be made unless a written request for a tran-
script is made, in which case the person requesting the transcript
shall be responsible for payment. If you do not wish to attend the public
hearing, you may submit written comments on the proposed
administrative regulation until close of business October 1, 2003.
Send written notification of intent to attend the public hearing or
written comments on the proposed administrative regulation to: Jill
Brown, Cabinet Regulation Coordinator, Cabinet for Health Ser-
vices, Office of the General Counsel, 275 East Main Street, SW-B,
Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-
7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Alex Rees
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes the process for long term care providers to
informally dispute federal deficiencies and state licensure deficien-
cies cited by the Office of the Inspector General at long term care
facilities.
(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary to comply with a federal Medicare and
Medicaid requirement that the state survey agency provide long
term care providers, subject to the requirements of 42 C.F.R.
488.331, an opportunity to informally dispute cited deficiencies.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: 42 C.F.R. 488.331 requires the cabinet to
establish an informal dispute resolution process to be used by a
provider to informally dispute a finding of deficiency at a nursing
facility or skilled nursing facility. This administrative regulation estab-
lishes the informal dispute resolution process.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation allows a long term care provider that receives a defi-
cency the opportunity to informally dispute the deficiency as re-
quired by 42 C.F.R. 488.331.
(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amended regulation will change the informal dispute
resolution process by amending the decision process. In each of the
informal dispute resolution formats the inspector general will make
the final determination of the agency.
(b) The necessity of the amendment to this administrative regu-
lation: The amendment to the regulation is necessary to comply with
a directive of the Centers for Medicare and Medicaid Services (CMS)
that requires the inspector general to make the final determina-
tion for informal dispute resolution.
(c) How the amendment conforms to the content of the author-
izing statutes: 42 C.F.R. 488.331 requires the cabinet to establish an
informal dispute resolution process to be used by a provider to in-
formally dispute a finding of deficiency at a nursing facility or skilled
nursing facility. This administrative regulation establishes the infor-
mal dispute resolution process.
(d) How the amendment will assist in the effective administration
of the statutes: The amended regulation will continue to allow a long
term care provider that receives a deficiency the opportunity to in-
formally dispute the deficiency as required by 42 C.F.R. 488.331.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: Currently, there are 591 long term care facilities that
are subject to the provisions of this administrative regulation.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: The
amended regulation will not result in a substantial change for the
long term care providers. The informal dispute resolution process
will remain in place with the addition of the requirement that the
initial informal dispute resolution recommendation be approved by
the inspector general.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There will be no additional costs associated with the
implementation of this amended administrative regulation.
(b) On a continuing basis: There will be no additional costs as-
associated with the implementation of this amended administrative
regulation.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: General
funds.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: This amended
regulation will not result in an increase to any fees.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees either directly or indirectly.

(8) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Hospitals and Outpatient Facilities Services
(Amendment)

907 KAR 1:015. Payments for hospital outpatient services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.2, 440.20
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1),
205.520(3), 205.620, 205.637, 42 U.S.C. 1396(a), (b), (d)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the 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 the method for determining amounts payable by the Medicaid Program for hospital outpatient services.

Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(2) "Current procedural terminology code" or "CPT code" means a code used for the reporting of medical services or procedures using the current procedural terminology developed by the American Medical Association.

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

(4) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(5) "Level 1 service" means services billed using CPT codes 99281.

(6) "Level 2 service" means services billed using CPT codes 99282 and 99283.

(7) "Level 3 service" means services billed using CPT codes 99284, 99285, 99289, and 99292.

(8) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, part 3, column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.

(9) "Revenue code" means a provider-assigned revenue code for each cost center for which a separate charge is billed.

(10) "Triage" means a medical screening and assessment billed using revenue code 451.

Section 2. Outpatient Hospital Services. (1) Except for a critical access hospital, for services provided on or after August 1, 2003, the Department for Medicaid Services shall reimburse a participating in-state hospital for outpatient services:

(a) At the following rate for the following procedures:
   1. Cardiac catheterization lab:
      a. Unilateral - $1,478; or
      b. Bilateral - $1,770;
   2. Computed tomography scan - $479;
   3. Lithotripsy - $3,737;
   4. Magnetic resonance imaging - $593;
   5. Observation room - $458; and
   6. Ultrasound - $177;
   (b) if any services listed in paragraph (a) of this subsection are provided, each service shall receive the corresponding rate established in paragraph (c) of this subsection.

(c) The department shall utilize the 1996 Medicare ambulatory surgical center groups to reimburse for an outpatient surgery. The following chart establishes the reimbursement rate for each corresponding surgical group:

<table>
<thead>
<tr>
<th>Ambulatory Surgical Center Group</th>
<th>Reimbursement Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>$397</td>
</tr>
<tr>
<td>Group 2</td>
<td>$534</td>
</tr>
<tr>
<td>Group 3</td>
<td>$610</td>
</tr>
<tr>
<td>Group 4</td>
<td>$753</td>
</tr>
<tr>
<td>Group 5</td>
<td>$858</td>
</tr>
<tr>
<td>Group 6</td>
<td>$1,016</td>
</tr>
<tr>
<td>Group 7</td>
<td>$1,191</td>
</tr>
<tr>
<td>Group 8</td>
<td>$1,191</td>
</tr>
</tbody>
</table>

(d) Reimbursement for an outpatient surgery which does not have a surgical group rate shall be at a facility-specific outpatient cost-to-charge ratio.

(e) For multiple surgeries provided to the same recipient on the same day, only the surgery with the highest reimbursement rate established in paragraph (c) of this subsection shall be paid.

(f) Except for the services listed in paragraph (g) of this subsection, all other services provided to the same recipient on the same day shall be reimbursed in accordance with paragraphs (a), (b) and (c) of this subsection.

(g) On an interim basis at a facility-specific outpatient cost-to-charge ratio for the following revenue codes:

<table>
<thead>
<tr>
<th>Service</th>
<th>Revenue Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pharmacy</td>
<td>250, 251, 252, 254, 255, 258, 260, 261, 634, 635, 636</td>
</tr>
<tr>
<td>X-ray</td>
<td>320, 321, 322, 323, 324, 330, 342, 400, 403, 920</td>
</tr>
<tr>
<td>Supplies</td>
<td>270, 271, 272, 274, 275, 621, 622, 623</td>
</tr>
<tr>
<td>Room and Miscellaneous</td>
<td>269, 290, 370, 371, 372, 374, 700, 710, 750, 761, 890, 891, 892, 893, 921</td>
</tr>
<tr>
<td>Dialysis</td>
<td>821, 831, 841</td>
</tr>
<tr>
<td>Chemotherapy</td>
<td>330, 331, 332, 333, 334, 335</td>
</tr>
</tbody>
</table>

(h) Services reimbursed in accordance with paragraph (g) of this subsection shall be settled to cost at year end.

(2) Except for pharmacy services billed using revenue codes 250, 251, 252, 254, 255, 258, 260, 261, 634, 635, 636, medical/surgical supplies billed using revenue codes 270-275, and triage billed using revenue code 451, a hospital shall include all applicable CPT and HCPCS codes on a claim.

(3) Except for services listed in subsection (1)(g) of this section, beginning August 1, 2003, an out-of-state hospital providing outpatient services shall be reimbursed in accordance with subsection (1) of this section.

(4) Services listed in subsection (1)(g) of this section provided by an out-of-state hospital shall be reimbursed by multiplying the average outpatient cost-to-charge ratio of in-state hospitals, excluding critical access hospitals by billed charges period.

(5)(a) An outpatient hospital laboratory service shall be reimbursed at the Medicare-established technical component rate in accordance with 907 KAR 1:029.

(b) An outpatient hospital laboratory service with no established Medicare rate, shall be reimbursed by multiplying a facility-specific outpatient cost-to-charge ratio by billed charges.

(6) A critical access hospital shall be reimbursed on an interim basis:

(a) By multiplying charges by the lesser of:
   1. The Medicare cost-to-charge ratio issued by the Medicare fiscal intermediary in effect at the time; or
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

Section 2. Outpatient Hospital Services. (1) For services provided on or after March 15, 2001, the Department for Medicaid Services shall reimburse a participating in-state hospital for outpatient services:

(a) On an interim basis, multiplying the hospital's Medicaid allowable cost of covered outpatient services by a ratio determined by dividing the hospital's Medicaid allowable cost of covered outpatient services from its most recently filed and reviewed cost report by the hospital's Medicaid billed charges for covered outpatient services for the same cost report period, and

(b) With a year-end settlement, to the lower of the hospital's Medicaid allowable cost of covered outpatient services or Medicaid allowable charges for covered outpatient services.

(2) By March 1, 2002, and continuing annually, out-of-state hospitals providing outpatient services exceeding $300,000 in paid claims for services provided during the preceding year shall provide the Department a copy of their most recent Medicare cost report which shall be used to determine a cost-to-charge ratio to set the interim rate effective for the subsequent July 1 rate period.

(3) The $300,000 threshold shall be determined from the amount paid through December 31 for services provided during the immediately preceding state fiscal year ending June 30. Hospitals required to submit a Medicare cost report shall be notified by the Department in writing by January 31.

(4) The cost report shall be due before March 1. A thirty (30) day extension for filing the cost report may be granted by the department if Medicaid grants an extension or if catastrophic circumstances exist.

(5) Failure to provide the required cost report in the allowed period shall result in a reduction of future payments to the lesser of the cost to charge ratio determined from the hospital's most recently submitted cost report, or the Kentucky statewide average rounded to the nearest percentage for in-state hospitals until the cost report is received and reviewed by the Department.

(6) The interim rate shall be subject to year-end cost settlement specified in subsection (3)(b) of this section.

(7) A participating out-of-state hospital with $100,000 or less in paid claims for outpatient services provided for the period specified in subsection (2)(a) of this section shall not be required to submit a cost report. Reimbursement shall be the Kentucky statewide average cost to charge ratio for in-state hospitals, rounded to the nearest percent, adjusted annually.

(8) Charges or costs shall not be transferred between a hospital's inpatient and outpatient service units.

(a) Outpatient hospital laboratory services shall be reimbursed at the Medicare established rate in accordance with 907 KAR 1:020.

(b) For outpatient hospital laboratory services with no established Medicare rate, reimbursement shall be sixty-five (65) percent of Medicaid billed charges with no settlement to the lower of cost or charges.

Section 3. Supplemental Payments. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a non-federal government hospital, as defined in 42 C.F.R. 447.321(2), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Sections 2 and 4 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.321.

(2) A payment made under this section shall:

(a) Not be subject to the cost-report provisions established in Section 2 of this administrative regulation; and

(b) Apply to a service provided on or after April 2, 2001.

Section 4. In-state and Out-of-state Emergency Room Services. (1) Services provided in an emergency room shall be reimbursed as follows:

(a) The triage service reimbursement rate shall be twenty (20) dollars;

(b) The level 1 service reimbursement rate shall be eighty-two (82) dollars;

(c) The level 2 service reimbursement rate shall be $164; and

(d) The level 3 service reimbursement rate shall be $264.

(2) In addition to the rate paid for services listed in subsection (1) of this section, the following services shall be paid at the following rates:

(a) Cardiac catheterization lab:

1. Unilateral - $1,478; or
2. Bilateral - $1,770;

(b) Computed tomography scan - $473;

(c) Lithotripsy - $3,737;

(d) Magnetic resonance imaging - $593;

(e) Observation room - $758; and

(f) Ultrasound - $777;

(3) If multiple services listed in subsection (2) of this section are provided, each service shall receive the corresponding rate established in subsection (2) of this section.

(4) Except as listed in subsection (5) of this section, a separate payment shall not be made for the services or supplies listed in Section 2(g) of this administrative regulation.

(5) A thrombolytic agent shall be reimbursed at the hospital's acquisition cost.

(6) A service provided in an emergency room of a critical access hospital shall be reimbursed in accordance with Section 2(g) of this administrative regulation.

Section 5. Appeals. A hospital may appeal a decision as permitted by 907 KAR 1:871.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Appeal Rights: A hospital may appeal a department decision involving the application of this administrative regulation to the hospital's reimbursement in accordance with 907 KAR 1:671.]

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: August 1, 2003
FILED WITH LRC: August 4, 2003 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 9 a.m. Eastern Time in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, five working days prior to the hearing, of their intent to attend. If no notification of
intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until close of business October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Owen (502-564-6204)

1. Provide a brief summary of:
   a. What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for hospital outpatient services.
   b. The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.
   c. How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant DMS the authority to reimburse hospitals for the provision of outpatient services.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for hospitals for outpatient 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: The amendment to this administrative regulation establishes that outpatient hospital services shall be reimbursed in accordance with an established fee schedule or at cost.
   b. The necessity of the amendment to this administrative regulation: This amendment is necessary to establish that outpatient hospital services shall be reimbursed in accordance with an established fee schedule or at cost in order to ensure the availability of funding for the continued operation of the Medicaid Program.
   c. How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing, as authorized, that outpatient hospital services shall be reimbursed in accordance with an established fee schedule or at cost.
   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 authorizing statutes by establishing, as authorized, that outpatient hospital services shall be reimbursed in accordance with an established fee schedule or at cost.

3. List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All hospitals providing outpatient hospital services that are reimbursed by DMS will be affected by this administrative regulation.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Hospitals which provide outpatient services will be reimbursed in accordance with an established fee schedule or at cost. This action is a cost-containment measure which will result in the aggregate of all Medicaid participating hospitals who provide outpatient services receiving an aggregate lower reimbursement of $24 million annually.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   a. Initially: DMS estimates that implementing the amendment to this administrative regulation will generate a savings of approximately $24 million annually.
   b. On a continuing basis: DMS estimates that implementing the amendment to this administrative regulation will generate a savings of approximately $24 million annually.

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: There will not be a need for an increase in funds or funding in order to implement this amendment.

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

9. Tiersing: Is tiering applied? Tiering is applied in that critical access hospitals shall be reimbursed based on cost while other hospitals shall be reimbursed in accordance with an established fee schedule or at cost.

CABINET FOR HEALTH SERVICES
Division of Long Term Care and Disability Services
(Amendment)

907 KAR 1:031. Payments for home health services.

RELATES TO: 42 C.F.R. 440.70, 447.325, 42 U.S.C. 1396a-d
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Kentucky 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 the method for determining amounts payable by the Medicaid Program for home health agency services that are provided to Kentucky's Medicaid eligible recipients.

Section 1. Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.

(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.

(3) "Cost report instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.

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

(5) "Home health agency" or "HHA" means an agency defined pursuant to 42 C.F.R. 440.70(d).

(6) "Interim rate" means a rate set for a provider for tentative reimbursement, based on reasonable allowable costs of providing a covered service, which may result in reimbursement adjustments after an audit or review determines the actual allowable cost during an accounting period.

(7) "Medicaid upper limit" means the maximum amount the Medicaid Program shall reimburse, on a facility-by-facility basis, for a unit of service.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 507 KAR 3:130.

(9) "Medicare upper limit" means the maximum reimbursement amount allowed by Medicare specific to:
   a. Each Medicare participating provider;
   b. Each category of service; and
   c. A unit of service.

(10) "Necessary function" means that if an owner of an agency had not provided the services pertinent to the operation of an HHA, a facility would have had to employ another person to perform the service.
(11) "Owner" means a person or a related family member with a cumulative ownership interest of five (5) percent or more.
(12) "Projected cost report" means an Annual Medicaid Home Health/HCB Cost Report that reflects costs that can reasonably be expected to be incurred by a provider for a specific period of time ending in the future.
(13) "Public agency" means an agency operated by a federal, state, county, city or other local governmental agency or instrumentality.
(14) "Rate year" means a twelve (12) month period beginning July 1 and ending the following June 30.
(15) "Related family member" means:
(a) Husband or wife;
(b) Natural or adoptive parent, child, or sibling;
(c) Stepparent, stepchild, stepbrother, stepsister;
(d) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;
(e) Grandparent or grandchild;
(f) Spouse of grandparent or grandchild;
(g) Aunt or uncle; or
(h) Spouse of aunt or uncle.
(16) "Settled" or "settlement" means an amount by which a provider's interim Medicaid payment for a specified period of time is adjusted based on an audited or desk reviewed cost report for that same period of time.
(17) "Uniform desk review" or "UDR" means an analysis of a provider's Annual Medicaid Home Health/HCB Cost Report to determine if the data is adequate, complete, accurate, and reasonable.
(18) "Usual and customary charge" means the uniform amount which a medical provider charges the general public for a specific service or procedure.

Section 2. Reimbursement Requirement. A home health service shall be provided in accordance with 907 KAR 1:030 to be eligible for reimbursement.

Section 3. Payment to an In-state HHA. (1) The department shall reimburse a Medicaid participating in-state HHA on the basis of an interim rate established pursuant to subsection (2) of this section for the following services:
(a) Speech therapy;
(b) Physical therapy;
(c) Occupational therapy;
(d) Medical social services;
(e) Home health aide services; and
(f) Skilled nursing services.
(2) The interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA as follows:
(a) The department shall use cost data for each category of service from an HHA's most recent Annual Medicaid Home Health/HCB Cost Report as of May 31 immediately preceding the rate year to set the interim rate;
(b) Medicaid specific data for units of service shall be adjusted using the Medicaid paid claims data;
(c) Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor's, by:
   1. Trending the total cost data to the beginning of a rate year; and
   2. Indexing cost data established pursuant to subparagraph 1 of this paragraph for inflationary cost increases projected to occur during the rate year;
(d) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (c)2 of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection;
(e) If a nonpublicly-operated HHA is eligible to receive a cost containment incentive payment pursuant to Section 5 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 5(1) of this administrative regulation to the average unit cost established pursuant to paragraph (d) of this subsection;
(f) The interim rate for a publicly-operated HHA shall be the lesser of:
   1. The average unit cost pursuant to paragraph (d) of this subsection;
   2. The Medicare upper limit as issued to the provider through a Medicare letter; and
   (g) The interim rate for a nonpublicly-operated HHA shall be the lesser of:
   1. Maximum average unit cost as established pursuant to paragraph (d) or (e) of this subsection that the provider is eligible to receive;
   2. Medicaid upper limit pursuant to Section 7 of this administrative regulation; or
(3) The department shall establish an interim payment not to exceed the allowable billed charge for an item listed in paragraphs (a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the items as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:
(a) Disposable medical supplies; and
(b) Enteral nutritional products.
(4) For a facility whose fiscal year ended on or before May 31, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be:
(a) Settled To the lesser of the:
   1. Allowable Medicaid cost, as established in an HHA cost report that the department has:
      a. Audited; or
      b. Desk reviewed; or
   2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a) of this subsection; and
   (b) Settled Utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference.
(5) For a facility whose fiscal year ended on or after June 30, 2003, within eighteen (18) months following the end of the facility's fiscal year, payments made pursuant to subsection (3) of this section shall be:
(a) Settled To the lesser of the:
   1. Allowable Medicaid cost, as established by the "Kentucky Medicaid Medical Supply Cost Settlement Worksheet, June 2003 edition" that the department has:
      a. Audited; or
      b. Desk reviewed; or
   2. Allowable billed charge reported by the Medicaid Management Information System (MMIS), except that a publicly-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 C.F.R. 413.13(f) shall be settled pursuant to paragraph (a) of this subsection; and
   (b) Settled utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference.
(6) If a settlement pursuant to subsection (4) of this section indicates that the department has overpaid a provider, the excess payment to the provider shall be recovered pursuant to 907 KAR 1:671, Section 2.
(b) If a settlement pursuant to subsection (4) of this section indicates that the department has underpaid a provider, a payout shall be issued to the provider through the MMIS during the next cycle following the discovery of the underpayment.

Section 4. Payment to a New In-state HHA. (1) An HHA that undergoes a change of ownership during a rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.
(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 3 of this administrative regulation after the provider submits a cost report pursuant to Section 8 of this administrative regulation.
(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall be:
(a) Considered a new HHA; and
(b) Reimbursed at the interim rate equal to the lesser of:
1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 3(2)(e) of this administrative regulation; or
2. The current Medicare upper limits.

(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:
(a) Submitted pursuant to Section 8 of this administrative regulation; and
(b) Received by the department by May 31 preceding the rate year.

(5) If, during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department may grant a rate change if the provider:
(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and
(b) Submits a projected cost report.

(6) When a new HHA's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 3(4) of this administrative regulation.

Section 5. Incentive Payment. (1) If a nonpublicly-operated HHA's nonaggregated base year costs are below the Medicaid upper limits pursuant to Section 7 of this administrative regulation for the corresponding period of time, the HHA shall receive a cost containment incentive payment, pursuant to Section 3(2)(e) of this administrative regulation, in accordance with the following payment schedule:

<table>
<thead>
<tr>
<th>PERCENTAGE OF PER UNIT COST TO UPPER LIMIT</th>
<th>INCENTIVE PAYMENT PER VISIT AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>95.01% - 100%</td>
<td>$1.00</td>
</tr>
<tr>
<td>90.01% - 95%</td>
<td>$1.50</td>
</tr>
<tr>
<td>85.01% - 90%</td>
<td>$2.00</td>
</tr>
<tr>
<td>80.01% - 85%</td>
<td>$2.50</td>
</tr>
<tr>
<td>80% and below</td>
<td></td>
</tr>
</tbody>
</table>

(2) An incentive payment shall:
(a) Be subject to verification of visits;
(b) Bear an inverse relationship to the current year basic per visit cost; and
(c) Be adjusted each July 1 during the interim rate setting process pursuant to Section 3 of this administrative regulation for the rate year.

(3) The portion of an interim rate equal to the "incentive payment per visit amount" shall not be subject to retrospective settlement pursuant to Section 3(4) of this administrative regulation.

Section 6. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a covered service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 3 of this administrative regulation.

(2) Except as provided in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky shall be reimbursed the lesser of the agency's:
(a) Usual and customary billed charge;
(b) Medicare upper limit; or
(c) Medicaid upper limit.

(3) If an out-of-state HHA provides the following items to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at eighty (80) percent of the HHA's usual and customary actual billed charges for:
(a) Disposable medical supplies; and
(b) Enteral nutritional products.

Section 7. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 3(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.

(2) Medicaid upper limits shall be determined by the department as follows:
(a) Based on the Standard Metropolitan Statistical Area (SMSA) designation, a nonpublicly-operated HHA shall be classified as:
   1. Urban; or
   2. Rural.
(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section.
(c) Each HHA's average unit cost per service as established pursuant to Section 3(2)(d) of this administrative regulation shall be:
   1. Grouped pursuant to paragraph (b) of this subsection; and
   2. Ranked from lowest to highest.
(d) The median per unit cost for each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 3(2)(b) of this administrative regulation.
(e) Medicaid upper limits for a nonpublicly-operated HHA shall be set at 105 percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.

(3) The following HHAs shall be exempt from the Medicaid upper limits, but shall be subject to the Medicare upper limits:
(a) A publicly-operated HHA; or
(b) A new HHA who does not have two (2) full years of operation.

(4) The Medicaid upper limit for skilled nursing services shall be the Medicare upper limit for skilled nursing services.

Section 8. Financial Data and Cost Reporting Requirements. (1) Except for a provider identified in Section 6(2) of this administrative regulation, an HHA shall submit to the department a completed cost report:
(a) That includes workpapers utilized to prepare the cost report including:
   1. Detail of how a recategorization or an adjustment was calculated;
   2. A working trial balance; and
   3. Schedules tying the trial balance to the cost report;
(b) On an annual basis, within five (5) months after the close of the HHA's fiscal year;
(c) Prepared in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions; and
(d) Pursuant to 42 C.F.R. 413.24(a), (b), (c), and (e).
(2) A thirty (30) day extension of time for submitting a cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care and Disability Services or his designee if:
(a) A provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control;
(b) The provider submits a request for the extension in writing; and
(c) The request is received by the department within five (5) months after the close of the HHA's fiscal year.
(3) An HHA's payment shall be suspended if:
(a1) Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed; and
2. A cost report has not been submitted to the department;
(b) The department determines that the HHA does not maintain or no longer maintains records pursuant to subsection (4) of this section; or
(c) The provider fails to provide the department with access to records pursuant to:
   1. 807 KAR 1:672, Section 2(6); or
   2. Subsection (4) of this section.
(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, the HHA shall retain and make available to the department:
(a) Records and documents pursuant to 42 C.F.R. 413.20(a), (c), and (d); and
(b) Documentation of work or services performed if compensa-
tion is claimed by the:
1. Owner; or
2. A related family member of the:
   a. Owner; or
   b. Administrator.
(5) If during a twelve (12) month period an HHA contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1:030 costing or valued at $10,000 or more, the HHA shall include a clause in the contract that requires a subcontractor to make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section.
(6) If the department is denied access to a subcontractor's records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.
(7) If an HHA has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be withheld until:
   (a) A cost report is received from the HHA provider for the period of time the provider participated in the Medicaid Program:
      1. Beginning with the first day of the provider's fiscal year immediately preceding the provider's termination date; and
      2. Ending on the date of termination of its provider agreement with the Medicaid Program; and
   (b) A final settlement pursuant to Section 3(4) of this administrative regulation is completed by the department.

Section 9. Allowable HHA Cost. (1) Except as limited pursuant to Section 10 of this administrative regulation, cost pursuant to subsection (2) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:
   (a) Reflected of a provider's actual expenses of providing a service; and
   (b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.
(2) Except as limited by Section 10 of this administrative regulation, and subsection (1) of this section, the following costs shall be allowable:
   (a) Allowable cost 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 nonpay workers pursuant to 42 C.F.R. 413.94;
   (e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.88; and
   (f) Therapy and other services pursuant to 42 C.F.R. 413.106.

Section 10. Limitations on Allowable HHA Cost. (1) Board of directors' fees.
   (a) The cost of board of director's fees shall be limited annually to:
      1. a. Five (5) meetings for a single-facility organization; or
         b. Twelve (12) meetings for a multiple-facility organization; and
      2. $200 for each director of the board attending each meeting, including the cost of attending the meeting.
   (b) The cost associated with a private club membership shall not be an allowable cost.
   (2) Motor vehicles.
   (a) An allowable motor vehicle cost shall be:
      1. Limited to cost related to patient care; and
      2. Documented sufficiently to support business use.
   (b) An allowable Cost associated with HHA facility-owned vehicles and mileage allowances shall be limited to the federal income tax mileage allowance.
   (c) The costs associated with personal use of a facility-owned motor vehicle shall not be an allowable cost unless the value of the personal use of the vehicle is:
      1. Included in the employee's W-2 statement; or
      2. Reported on a Form 1099 in accordance with Internal Revenue Service regulations.
   (d) An allowable cost pursuant to paragraph (c) of this subsection shall be considered compensation to the extent that:
      1. Compensation to an owner does not exceed owner's compensation limits pursuant to Section 11 of this administrative regulation; and
      2. The total compensation package to a nonowner is reasonable pursuant to 42 C.F.R. 413.9(b).
   (3) The cost associated with political contributions shall not be allowable.
   (4) The following legal fees shall not be allowable:
      (a) A legal fee associated with unsuccessful lawsuits against the Cabinet for Health Services or the department;
      (b) A legal fee incurred by the provider in an attempt to block the approval of a certificate of need for another provider;
      (c) A legal fee associated with the acquisition of another HHA;
      (d) A legal fee resulting from the commission of an illegal act by an:  
       1. HHA;
       2. HHA's owner; or
       3. HHA's agent; or
       (e) A legal fee unrelated to patient care.
   (5) Legal fees associated with successful lawsuits against the cabinet shall be limited to inclusion as allowable cost in the period:
      1. In which a suit is settled after a final decision has been issued that the lawsuit is successful;
      2. Agreed to by involved parties; or
      3. As ordered by the court.
   (6) Travel expenses. The cost of travel expenses shall be limited to:
      (a) Activities related to the educational needs of the:
         1. Agency owners;
         2. Directors; or
         3. Staff;
      (b) Reasonable and necessary cost pursuant to 42 C.F.R. 413.9(b) as determined in evaluating the:
         1. Number of trips taken;
         2. Expense associated with each trip;
         3. Number of persons attending each function; and
         4. Appropriateness of a training; and
      (c) Trips taken within the forty-eight (48) contiguous United States.

Section 11. Owner's Compensation Limits. (1) Compensation to an owner who is not an administrator shall:
   (a) Be considered an allowable cost pursuant to 42 C.F.R. 413.102; and
   (b) Exclude:
      1. Board of directors' fees; and
      2. Fringe benefits routinely provided to all employees.
(2) Compensation of a part-time owner-employee performing managerial functions shall not exceed the percent of time worked times eighty (80) percent of the applicable compensation limits for an owner administrator.
(3) A full-time owner-administrator or full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated shall be limited to:
   (a) Reasonable compensation from the nonprimary owner for not more than fourteen (14) hours per week supported by:
      1. The owner's proof of performance of a necessary function; and
      2. Documentation of time claimed for compensation; and
   (b) A salary from the agency with which the person is primarily associated.
(4) Managerial functions performed in a nonprimary agency by a full-time owner-administrator or a full-time owner-employee of another agency shall not be considered an allowable cost.
(5) Compensation to an owner-administrator of a rural or urban HHA shall be:
   (a) Limited to $80,579 beginning July 1, 1999;
   (b) Increased on July 1 of each year by the inflation factor index for wages and salaries of the Home Health Agency Market Basket of Operating Cost as indicated by the National Forecasts supplied by Standard and Poor's, Inc.; and
   (c) Published annually through a notification to all providers to advise of the revised limits for owner's compensation to be effective July 1 of each year.
Section 12, Audit Functions. (1) All HHA provider costs applicable to a Medicaid beneficiary shall be subject to:
(a) Review or audit by the department; and
(b) A final retroactive settlement based upon an adjustment to an HHA provider’s costs reported in a cost report for any reporting period under review or audit.
(2) The department shall perform a uniform desk review (UDR) of each provider’s annual cost report.
(3) A summary of the UDR shall be used:
(a) To settle the cost report without audit; or
(b) To determine the extent to which audit verification is required.
(4) If indicated by the uniform desk review, an audit shall be conducted in accordance with the “Government Auditing Standards”.

Section 13, Payment Amounts for State Fiscal Year (SFY) 2002. Effective July 1, 2001, the payment rate that was in effect on June 30, 2001 for a home health service shall remain in effect until July 1, 2002.

Section 14, Payment Amounts Effective July 1, 2002. A participating HHA shall be reimbursed for a home health service provided in accordance with 907 KAR 1:030 at the lesser of:
(1) The provider's usual and customary charge; or
(2) The Medicaid fixed upper payment limit per unit of service as established in Section 15 of this administrative regulation.

Section 15, Fixed Upper Payment Limits Effective July 1, 2002. The following rates shall be the fixed upper payment limits for home health services:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fixed Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skilled Nursing</td>
<td>$83.00 per visit</td>
</tr>
<tr>
<td>Home Health Aide</td>
<td>$32.50 per visit</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>$81.00 per visit</td>
</tr>
<tr>
<td>Medical Social Service</td>
<td>$65.00 per visit</td>
</tr>
</tbody>
</table>

Section 16, Supplemental Payments to Licensed County Health Departments. (1) Beginning September 1, 2003, the department shall make supplemental payment to a licensed county health department home health agency equal to the difference between:
(a) Payments received for services on or after November 1, 2002 in accordance with Section 15 of this administrative regulation; and
(b) The estimated cost of providing services during the same time period.
(2) Based on a provider's most recently submitted annual cost report, estimated costs of providing services shall be determined by multiplying the cost per unit by the number of units provided during the period.
(3) If a provider's cost as estimated from its most recently submitted annual cost report is less than the payments received under Section 15 of this administrative regulation, the department shall recoup any excess payments.

Section 17, Reimbursement Review and Appeal. An HHA may appeal a decision as to the application of this administrative regulation as it impacts the provider’s reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 18, [42] Incorporation by Reference. (1) The following material is incorporated by reference:
(b) The “Annual Medicaid Home Health/HCB Cost Report Instructions”, Department for Medicaid Services, May 1991 edition; and
(c) The "Government Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States;
(d) The "Kentucky Medicaid Medical Supply Cost Settlement Worksheet", Department for Medicaid Services, June 2003 edition; and

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

MIKE ROBINSON, Commissioner
MARIA R. MORGAN, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 4, 2003 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2003 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until close of business October 1, 2003. Send written notification of intent to attend the public hearing or comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Teresa Goodrich or Stuart Owen (502)-564-6204
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for home health services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for home health services.
(c) How this administrative regulation conforms to the content of the governing statutes: This administrative regulation conforms to the content of the governing statutes by establishing the reimbursement methodology for home health services.
(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 the reimbursement methodology for home health 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: The amendment to this administrative regulation establishes provision for supplemental payments to licensed county health departments participating in Kentucky's Medicaid Program and providing home health services. Further, the amendment to this administrative regulation streamlines cost settlement procedures for disposable medical supplies and enteral nutritional products.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure that necessary funds will be available for continued operation of the Medicaid Program.
(c) How the amendment conforms to the content of the governing statutes: The amendment to this administrative regulation conforms to the content of the governing statutes by enabling DMS to receive federal funding via an intergovernmental fund transfer arrangement between DMS and any qualifying licensed county health department providing home health services. This administrative regulation also conforms to the content of the governing statutes by establishing the appropriate cost settlement procedures for disposable medical supplies and enteral nutritional products for
providers with a fiscal year end of June 30, 2003. The amendments to this administrative regulation ensure that necessary funds will be available for the continued operation of the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by enabling DMS to receive federal funding via an intergovernmental fund transfer arrangement between DMS and any qualifying licensed county health department providing home health services. This administrative regulation also conforms to the content of the authorizing statutes by establishing the appropriate cost settlement procedures for disposable medical supplies and enteral nutritional products for providers with a fiscal year end of June 30, 2003. The amendments to this administrative regulation ensure that necessary funds will be available for the continued operation of the Medicaid Program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect approximately 12 local county home health department providing home health service and approximately 125 providers enrolled in the home health service program.

(4) Provide an assessment of how the above group or groups will be affected by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Beginning September 1, 2003, the department will make additional payment to a local county health department home health agency equal to the difference between payments received for services on or after November 1, 2002. Supplemental payments shall be based on data from the most recently submitted annual cost report. Also, home health providers will be impacted as they will complete a "Medicaid Medical Supply Cost Settlement Worksheet" for fiscal year end June 30, 2003 and submit along with the worksheet their Medicare cost report.

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

(a) Initially: Implementing the amendment to this administrative regulation will enable the Department for Medicaid Services (DMS) to receive federal funds via an intergovernmental transfer arrangement between DMS and any qualifying licensed county health department providing home health services. Federal funds of $5,989,280 and state matching funds of $2,210,720 will be expended during state fiscal year (SFY) 2003 and 2004 combined, however, the state matching funds will be provided by the participating licensed county health departments.

(b) On a cost basis: Implementing the amendment to this administrative regulation will enable DMS to receive federal funds via an intergovernmental transfer arrangement between DMS and any qualifying licensed county health department providing home health services. Federal funds of $5,989,280 and state matching funds of $2,210,720 will be expended during state fiscal year (SFY) 2003 and 2004 combined, however, the state matching funds will be provided by the participating licensed county health departments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the amendment to this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementing the amendment to this administrative regulation will enable DMS to receive federal funds via an intergovernmental transfer arrangement between DMS and any qualifying licensed county health department providing home health services. Federal funds of $5,989,280 and state matching funds of $2,210,720 will be expended during state fiscal year (SFY) 2003 and 2004 combined, however, the state matching funds will be provided by the participating licensed county health departments.

(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 subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Medicaid Services for Mental Health and Mental Retardation
(Attachment)

907 KAR 1:145. Supports for community living services for an individual [individuals] with mental retardation or developmental disabilities.

RELATES TO: KRS 205.520, 42 C.F.R. 441 [44] Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.6317 [194A.050, EO 95-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 95-862, effective July 2, 1995, recognized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. 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. This administrative regulation establishes standards for home and community-based services provided to an individual with mental retardation or a developmental disability [disabled] as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability [services for the mentally retarded].

Section 1. Definitions. (1) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an SCL recipient.

(2) "Behavior support specialist" means an individual who has a master's degree with formal graduate coursework in a behavioral science and at least one (1) year of experience in behavioral programming.

(3) "CBD" means the Department for Community Based Services.

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

(5) "DMHMR" means the Department for Mental Health and Mental Retardation Services.

(6) "DMR" means the Division of Mental Retardation in the Department for Mental Health and Mental Retardation Services.

(7) "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

- (a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
- (b) Death or incapacitation of the primary caregiver;
- (c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has been completed but is expected to be completed in less than (2) weeks or less;

- (d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) days time period; or
- (e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(8) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.
(9) "ICF/MR/DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(10) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient's legal representative, support coordinator, or others designated by an SCL recipient.

(11) "Medically necessary" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(12) "Occupational therapist" means an individual who is licensed in accordance with KRS 319A.010.

(13) "Physical therapist" means an individual who is licensed in accordance with KRS 327.010.

(14) "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(15) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(16) "Qualified mental retardation professional" or "QMRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and meet the professional criteria in accordance with 42 C.F.R. 443.436.

(17) "SCL provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(18) "SCL recipient" means an individual who meets the criteria established in Section 4 of this administrative regulation.

(19) "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(20) "Supports for community living" or "SCL" means home and community-based waiver services for an individual with mental retardation or a developmental disability.

Section 2. SCL Recipient Eligibility, Enrolment and Termination.
(1) To be eligible to receive a service in the SCL program, an individual shall:
(a) Be placed on the SCL waiting list in accordance with Section 6 of this administrative regulation;
(b) Receive notification of potential SCL funding in accordance with Section 6 of this administrative regulation;
(c) Meet ICF/MR/DD level of care requirements established in 907 KAR 1:022;
(d) Meet Medicaid eligibility requirements established in 907 KAR 1:005;
(e) Submit an application packet to DMH/MR which shall contain:
   1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-360;
   2. The Freedom of Choice of Home and Community Based Waiver for Persons with MR/DD Service Providers Form, MAP- 4102;
   3. The level of care determination;
   4. A physical examination that is less than one (1) year old;
   5. A statement for the need for long-term care services which shall be signed and dated by a physician or a QMRP and be less than one (1) year old;
   6. A psychological examination completed by a licensed psychologist;
   7. A social case history which is less than one (1) year old;
   8. Any projections of the needed supports and a preliminary plan for meeting those needs;
   9. A preliminary cost worksheet; and
   10. A MAP-24 documenting an individual's status change; and
   (f) Receive notification of admission packet approval from the department.
(2) To maintain eligibility as an SCL recipient:
(a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155.
(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:805;
(c) An ICF/MR/DD level of care determination shall be performed by the department at least once every twelve (12) months; and
(d) An SCL provider shall notify the local DCBS office and the department on a MAP-24 form if an SCL recipient is:
   1. Terminated from the SCL waiver program;
   2. Admitted to an ICF/MR/DD facility; or
   3. Transferred to another Medicaid waiver program.
(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF/MR/DD or other facility.
(4) The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver service would reasonably be expected to exceed the cost of ICF/MR/DD service.
(5) Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:
(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.
   1. The individual or legal representative shall have the burden of providing documentation of good cause, including:
   a. A statement signed by the recipient or legal representative;
   b. Copies of letters to providers; and
   c. Copies of letters from providers.
   2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:
      a. Sixty (60) days for an individual who does not reside in a facility; or
      b. The length of the transition plan and contingent upon continued active participation in the transition plan for an individual who does reside in a facility.
   (b) An SCL recipient or legal representative fails to access the required service as outlined in the ISP for a period greater than sixty (60) consecutive days without good cause shown.
   1. The recipient or legal representative shall have the burden of providing documentation of good cause including:
      a. A statement signed by the recipient or legal representative;
      b. Copies of letters to providers; and
      c. Copies of letters from providers.
   2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:
      a. Sixty (60) days for an individual who does not reside in a facility; and
      b. The length of the transition plan and contingent upon continued active participation in the transition plan for an individual who does reside in a facility.
   (c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or
   (d) An SCL recipient does not meet ICF/MR/DD level of care criteria.
(6) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:
(a) Simultaneous notice to the SCL recipient or legal representative and the support coordinator at least ten (10) days prior to the effective date of the action, which shall include:
   1. A statement of the intended action;
   2. The basis for the intended action;
   3. The authority by which the action is taken; and
   4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;
(b) Submittal of a DMR-001 to DMH/MR at least twenty (20) days prior to the effective date of the intended action; and
(c) The support coordinator in conjunction with the provider to:
   1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;
   2. Provide assistance to the SCL recipient in making contact with another SCL provider;
   3. Arrange transportation for a requested visit to an SCL provider site;
   4. Provide a copy of pertinent information to the SCL recipient or legal representative;
   5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured; and
   6. Provide assistance to ensure a safe and effective service transition.
(7) Involuntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

service provider and to DMHR,
(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and
(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3, Provider Participation. (1) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:
(a) Be certified by the department prior to the initiation of the service;
(b) Be recertified at least annually by the department; and
(c) Have a main office within the Commonwealth of Kentucky.

(2) An SCL provider shall comply with 907 KAR 1:871, 907 KAR 1:872, 907 KAR 1:873 and 902 KAR 20:078.

(3) An SCL provider shall have a governing body that shall:
(a) Be a legally constituted entity within the Commonwealth of Kentucky;
(b) Not contain a majority of owners;
(c) Be responsible for the overall operation of the organization that shall include:
1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;
2. Appointing and annually evaluating the executive director;
3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;
4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and
5. Orienting a new member of the governing body to the operation of the organization.

(a) An annual review of written policy and procedures;
(b) An annual review of written policy and procedures;
(c) A current table of organization;
(d) A memorandum of understanding with an SCL support coordination provider with whom they share individual support plans;
(e) Information regarding satisfaction of an SCL recipient and the utilization of that information; and
(f) A quality improvement program.

(6) An SCL provider shall:
(a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;
(b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;
(c) Meet the following requirements if responsible for the management of SCL recipient funds:
1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;
2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and
3. The SCL recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An SCL provider shall have a written statement of its mission and values, which shall:
(a) Support empowerment and informed decision-making;
(b) Support and assist people to remain connected to natural support networks; and
(c) Promote dignity and self-worth.

(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction by direct care staff;
(c) Require prompt notification of any unusual occurrence;
(d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient’s right of privacy;
(e) Require involvement in decision making regarding the selection and direction of the service provided; and
(f) Consider the cultural, educational, language and socioeconomic characteristics of the family being supported.

(9) An SCL provider shall ensure the rights of an SCL recipient by:
(a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:
1. The right to time, space, and opportunity for personal privacy;
2. The right to communicate, associate and meet privately with the person of choice;
3. The right to receive and return unopened mail;
4. The right to retain and use personal possessions including clothing and grooming articles, and
5. The right to private, accessible use of the telephone;
(b) Having a grievance and appeals system that includes an external mechanism for review of complaints;
(c) Establishing a human rights committee which shall:
1. Include an:
   a. SCL recipient;
   b. Individual not affiliated with the SCL provider; and
   c. Individual who has knowledge and experience in rights issues;
2. Review and approve all ISP’s with rights restrictions at least annually;
3. Review and approve, in conjunction with the SCL recipient’s team, behavior support plans that include highly restrictive procedures or contain rights restrictions; and
4. Review the use of a psychotropic medication by an SCL recipient with no Axis I diagnosis;
(d) Establishing a behavior intervention committee which shall:
1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;
2. Be separate from the human rights committee;
3. Review and approve prior to implementation and at least every six (6) months, in conjunction with the SCL recipient’s team, behavior support plans that include highly restrictive procedures or contain rights restrictions; and
4. Review the use of a psychotropic medication by an SCL recipient with no Axis I diagnosis and recommend an alternative intervention when appropriate; and
(e) Complying with the Americans with Disabilities Act (29 C.F.R. 35).

(10) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided. For a minor, the record and incident report shall be maintained for a minimum of six (6) years past the age of twenty-one (21) and all records and incident reports shall be made available to:
(a) The department;
(b) DMHR or its designee;
(c) The Commonwealth of Kentucky, Cabinet for Health Services, Office of Inspector General or its designee;
(d) The United States General Accounting Office or its designee;
(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;
(f) The Commonwealth of Kentucky, Office of the Attorney General or its designee;
(g) The Commonwealth of Kentucky, Cabinet for Families and Children or its designee; or

(h) The Centers for Medicare and Medicaid Services.

(11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

(12) An SCL provider shall maintain a record for each SCL recipient served that shall:

(a) Be recorded in permanent ink;
(b) Be free from correction fluid;
(c) Have a strike through each error that is initialed and dated; and

(d) Contain no blank lines in between each entry;
(13) A record of each SCL recipient who is served shall:
(a) Contain all information necessary for the delivery of the SCL recipient's services;
(b) Be cumulative;
(c) Be readily available;
(d) Contain documentation which shall meet the requirements of Section 4 of this administrative regulation;
(e) Contain a legend that identifies any symbol and abbreviations used in making a record entry;
(1) Contain the following specific information:
1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);
2. The intake or face sheet;
3. The self-assessment;
4. An assessment summary relevant to the service area;
5. The current ISP;
6. The training objective for any support which provides skills training to the SCL recipient;
7. The service objective for those supports which do not provide skills training;
8. A list containing emergency contact telephone numbers;
9. The SCL recipient's history of allergies with appropriate allergy alerts for severe allergies;
10. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;
11. A photograph that is less than one (1) year old of the SCL recipient;
12. Legally-adequate consent, updated annually for the provision of services or other treatment which shall include those requiring emergency attention and shall be located at each service site;
13. The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;
14. The SCL recipient's social history updated at least annually;
15. An annual physical exam;
16. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;
17. Psychological evaluation;
18. Original and current level of care certification; and
19. The MAP-852X, Department for Community Based Services Notice of Availability for Long Term Care Waiver Agency/Hospice Form;

(g) Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;

(h) Have the security from loss, destruction or use by an unauthorized person ensured by the provider and
(i) Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An SCL provider shall:
(a) Ensure that each staff, prior to providing direct care to a recipient, has tested negatively for tuberculosis within the past two (2) months; and
(b) Maintain documentation of each staff member's negative tuberculosis test described in subparagraph 1 of this paragraph.

(15) An SCL provider shall:
(a) Have written personnel guidelines for each employee to include:
1. Salary range;
2. Vacation and leave procedures;
3. Health insurance;
4. Retirement benefits;
5. Opportunity for continuing education; and
6. Grievance procedures;
(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities;
(d) Annually review each job description;
(e) For each potential employee, obtain a criminal record check from the Administrative Office of the Courts for each state in which the individual resided during the previous year:
1. Prior to employment and annually thereafter if the individual is hired; and
2. Prior to placement as a volunteer performing direct care staff or a supervisory function, and annually thereafter if the individual is placed;
(f) If not employ or place an individual with a prior conviction of an offense delineated in KRS 17:56(1) through (3) or prior felony conviction; and
(g) Evaluate the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(16) An SCL provider shall:
(a) Have an executive director who:
1. Is qualified with a bachelor's degree in administration or a human services field; and
2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;
(b) Have a director of the SCL waiver program who:
1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities;
2. Is a QMRF; and
3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met.
(c) Have adequate direct-contact staff who:
1. Are eighteen (18) years or older; and
2. Has a high school diploma or GED; or
3. Are twenty-one (21) years old; and
4. Has effective communication skills; and
(d) Have adequate supervisory staff who:
1. Are eighteen (18) years or older; and
2. Has a high school diploma or GED; or
3. Are twenty-one (21) years old; and
4. Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability.

(17) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:
(a) Ensuring the health, safety and welfare of the SCL recipient.
(b) Maintenance of sanitary conditions;
(c) Ensuring each site operated by the provider is equipped with:
1. An operational smoke detector placed in strategic locations; and
2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 110 degrees Fahrenheit;
(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:
1. Safe storage and use of common household items; and
2. That firearms and ammunition are permitted:
   a. Only in a family care home or an adult foster care home; and
   b. Only if stored separately and under double lock;
(f) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
(g) Ensuring that staff administering medication:
1. Have specific training and documented competency on cause and effect and proper administration and storage of medication; and
2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:
   a. Be kept in a locked container;
   b. If a controlled substance, be kept under double lock;
   c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary;
   d. Be documented on a medication administration form and properly disposed of, if discontinued; and
   (h) Policy and procedures for ongoing monitoring of medication administration.

   (17) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:
   a. Be readily accessible on site;
   b. Include instructions for notification procedures and the use of alarm and signal systems to alert an SCL recipient according to his or her disability;
   c. Include an evacuation drill to be conducted and documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and
   d. Mandate that the result of an evacuation drill be evaluated and modified as needed.

   (18) An SCL provider shall:
   a. Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;
   b. Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;
   c. Require documentation of all training which shall include:
      1. The type of training provided;
      2. The name and title of the trainer;
      3. The length of the training;
      4. The date of completion; and
      5. The signature of the trainer verifying completion;
   d. Ensure that each employee complete Phase I training, consistent with a DMH/MPH approved curriculum, prior to working independently but no later than three (3) months from the date of employment, which shall include:
      1. Individualized instruction on the needs of the SCL recipient to whom the trainer provides support;
      2. Training on the identification and reporting of abuse, neglect, and exploitation;
      3. Introduction to support for an individual with mental retardation or a developmental disability;
      4. Medication and seizures;
      5. Safety awareness;
      6. Recordkeeping;
      7. First aid, which shall be provided by an Individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   e. Coronary pulmonary resuscitation which shall be provided by an Individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   f. Medication administration, which shall be provided by a nurse, pharmacist, or medical doctor;
   g. Ensure that each employee complete Phase II training, consistent with a DMH/MPH approved curriculum, within six (6) months of employment, which shall include:
      1. Introduction to mental retardation and other developmental disabilities;
      2. Values and principles;
      3. Working with a family;
      4. Individualized planning;
      5. Understanding behavior;
      6. Learning to listen;
      7. Health needs and services;
      8. Social and sexual aspects of life;
      9. Basic home management if the employee has responsibility for:
      a. Laundering;
     b. House cleaning;
     c. Food storage and meal planning; or
   d. An activity in the home; and
   10. Nutrition and meal planning if the employee has responsibility for:
      a. Interaction of common medication with food;
      b. Nutritional needs;
      c. Basic meal planning;
      d. Food storage and handling;

   (f) Not be required to receive the training specified in this section if the provider is:
   1. An occupational therapist providing occupational therapy;
   2. A physical therapist providing physical therapy;
   3. A psychologist or psychologist with autonomous functioning providing psychological evaluation; or
   4. A speech therapist providing speech therapy; and
   g. Ensure that an individual volunteer performing direct care staff or a supervisory function receive training prior to working independently, which shall include:
   1. Orientation to the agency;
   2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;
   3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;
   4. Coronary pulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization.

Section 4. Covered Services. (1) An SCL waiver service shall:
   a. Be prior authorized by the department; and
   b. Be provided pursuant to the individual support plan.

   (2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:
      a. Behavioral support which shall:
      1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
      2. Include a functional analysis of the SCL recipient's behavior which shall include:
          a. An analysis of the potential communicative intent of the behavior;
          b. The history of reinforcement for the behavior;
          c. Critical variables that precede the behavior;
          d. Effects of different situations on the behavior; and
          e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;
      3. Include the development of a behavioral support plan which shall:
          a. Be developed by the behavioral specialist;
          b. Be implemented by another SCL provider;
          c. Be revised as necessary;
          d. Define the techniques and procedures used;
          e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
      f. Reflect the use of positive approaches; and
      g. Prohibit the use of corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
      4. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;
      5. Include the monitoring of an SCL recipient's progress which shall be accomplished through:
          a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
          b. The reports of an SCL provider involved in implementing the behavioral support plan;
   6. Be provided by a behavior support specialist who shall have:
      a. A master's degree with formal graduate course work in a behavioral science; and
      b. One (1) year of experience in behavioral programming;
      c. Be documented by a detailed staff note which shall include:
          a. The date of service;
          b. The beginning and ending time; and
          c. The signature, date of signature and title of the behavioral specialist.
8. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;
   (b) Community habilitation which shall be:
      1. The provision of support, training and intervention in the areas of:
         a. Self care;
         b. Daily living skills;
         c. Communication;
         d. Behavior support;
         e. Social skills; and
         f. Vocational training;
   2. Provided in the community or a nonresidential setting;
   3. Provided to enable the SCL recipient to:
      a. Participate in a community project as a volunteer in a typically unpaid position;
      b. Access and utilize community resources; and
      c. Utilize a variety of assistance and training to interact with the environment through expressive services which shall be based on goals and be therapeutic rather than diversional;
   4. Documented by:
      a. A time and attendance record which shall include:
         i. The date of service;
         ii. The beginning and ending time; and
         iii. The signature, date of signature and title of the individual providing the service; and
      b. A detailed monthly staff note which shall include:
         i. The time, month, day and year for each note written;
         ii. The time, month, day and year for the time period the note covers;
      c. Progress toward outcomes identified in the ISP;
   5. Limited to forty (40) hours per week alone or in combination with supported employment and a prevocational service;
   c. Community living supports which shall:
      a. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his own home or in his family’s home;
   2. Be supports which shall not be diversional in nature and shall include:
      a. Assistance;
      b. Activity training;
      c. Laundry;
      d. Routine household care and maintenance;
      e. Activities of daily living;
      f. Personal hygiene;
      g. Shopping;
      h. Use of money;
      i. Medication management;
      j. Socialization;
      k. Relationship building;
      l. Leisure choices;
      m. Participation in generic community activities; or
      n. Therapeutic goals;
   3. Be provided on a one-to-one (1 to 1) basis;
   4. Not be provided at a community habilitation site;
   5. Be documented by:
      a. A time and attendance record which shall include:
         i. The date of the service;
         ii. The beginning and ending time; and
         iii. The signature, date of signature and title of the individual providing the service;
      b. A detailed monthly summary note which shall include:
         i. The time, month, day and year for each note written;
         ii. The time, month, day and year for the time period the note covers;
   6. Be limited to sixteen (16) hours per day alone or in combination with community habilitation, supported employment and prevocational services;
   d. Occupational therapy which shall be:
      1. A physician-ordered evaluation of an SCL recipient’s level of functioning by applying diagnostic and prognostic tests;
      2. Physician-ordered services in a specified amount and duration to enable an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;
      3. Training of other SCL providers on improving the level of functioning;
   e. Physical therapy which shall be:
      1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;
      2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;
   f. Training of another SCL provider on improving the level of functioning;
   1. Designed to prepare an SCL recipient for paid or unpaid employment through activities that are not job-specific, including:
      a. Supporting the SCL recipient to understand the meaning, value and demands of work;
      b. Teaching social and communication skills;
      c. Teaching habilitative goals;
      d. Teaching work performance skills; or
      e. Job seeking and maintaining skills;
      2. Provided to an SCL recipient who is not expected to be able to join the general work force within one (1) year;
   3. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient’s file;
   4. Provided on a one-to-one (1 to 1) basis;
      5. Documented by:
         a. A time and attendance record which shall include:
            i. The date of the service;
            ii. The beginning and ending time; and
            iii. The signature, date of signature and title of the individual providing the service;
      b. A detailed monthly summary note which shall include:
         i. The time, month, day and year for each note written;
         ii. The time, month, day and year for the time period the note covers;
      c. Progress toward outcomes identified in the ISP;
      d. Progress, regression and maintenance toward outcomes identified in the ISP; and
      e. The signature, date of signature and title of the individual preparing the summary note; and
3. Include:
   a. The administration of psychological testing;
   b. Evaluation;
   c. Diagnosis;
   d. Treatment;
4. Be incorporated into the ISP with input from the psychological service provider for the development of program-wide support;
5. Be provided by a psychologist or a psychologist with autonomous functioning;
6. Be documented by a detailed staff note which shall include:
   a. The date of the service;
   b. The beginning and ending time; and
   c. The signature, date of signature and title of the individual providing the service;
   (h) Residential support service which shall:
   I. Include twenty-four (24) hour supervision in:
   a. A staffed residence which shall not have greater than three (3) SCL recipients in a home rented or owned by the SCL provider; and
   b. A group home which shall be licensed in accordance with 902 KAR 20:078 and shall not have greater than three (3) SCL recipients, unless:
   (i) The group home has three (3) or more SCL recipients; and
   (ii) An individual residing in the group home who is not an SCL recipient receives notification of SCL funding and desires to continue living in the group home;
   c. A family care home which shall not have greater than three (3) SCL recipients living in the home; or
   d. An adult foster care home which shall not have greater than three (3) SCL recipients aged eighteen (18) or over living in the home;
   2. Utilize a modular home only if the:
      a. Wheels are removed;
      b. Home is anchored to a permanent foundation; and
      c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;
   3. If provided via a modular home, have 180 days from the effective date of this administrative regulation to meet the modular home requirements;
4. Not utilize a motor home;
5. Provide a sleeping room which ensures that an SCL recipient:
   a. Does not share a room with an individual of the opposite sex who is not the SCL recipient’s spouse;
   b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years; and
   c. Does not share a room with an individual who presents a potential threat; and
   d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient’s health and comfort;
6. Provide assistance with daily living skills which shall include:
   a. Ambulation;
   b. Dressing;
   c. Grooming;
   d. Eating;
   e. Toileting;
   f. Bathing;
   g. Meal planning and preparation;
   h. Laundry;
   i. Budgeting and financial matters; or
   j. Home care and cleaning;
7. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the individual support plan;
8. Provide or arrange for transportation to services, activities, and medical appointments as needed;
9. Include participation in medical appointments and follow-up care as directed by the medical staff; and
10. Be documented by a detailed monthly summary note which shall include:
   a. The time, month, day and year for each note written;
   b. The time, month, day and year for the time period the note covers;
   c. Progression, regression and maintenance toward outcomes identified in the ISP;
   d. Pertinent information regarding the life of the SCL recipient; and
   e. The signature, date of signature, and title of the individual preparing the staff note;
   (i) Rationale which shall be:
      a. Provided only to an SCL recipient unable to administer self-care;
      b. Provided in a variety of settings;
      c. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;
      d. Provided only to an SCL recipient who resides in a family care home, adult foster care home, or his or her family’s home;
      e. Limited to 1440 hours per calendar year; and
      f. Documented by a detailed staff note which shall include:
         (i) The date of the service;
         (ii) The beginning and ending time; and
         (iii) The signature, date of signature and title of the individual providing the service;
   (j) Specialized medical equipment and supplies which shall:
      1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;
      2. Enable an SCL recipient to increase his ability to perform daily living activities or to perceive, control or communicate with the environment;
      3. Be ordered by a physician and submitted on a MAP-95;
      4. Include equipment necessary to the proper functioning of specialized items;
      5. Not be available through the department’s durable medical equipment, vision, hearing, or dental program;
      6. Meet applicable standards of manufacture, design and installation; and
      7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;
   (k) Speech therapy which shall be:
      1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;
      2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;
      3. Training of other SCL providers on improving the level of functioning;
      4. Exclusive of maintenance or the prevention of regression;
      5. Be provided by a speech therapist;
      6. Documented by a detailed staff note which shall include:
         a. Progress toward outcomes identified in the ISP;
         b. The date of the service;
         c. The beginning and ending time; and
         d. The signature, date of signature and title of the individual providing the service; and
      (l) Support coordination which shall be:
         1. Initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;
         2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;
         3. Assisting an SCL recipient and the support team to develop, update and monitor the ISP which shall:
            a. Be initially developed within thirty (30) days of the initiation of the service; and
            b. Be updated at least annually; and
            c. Include the addenda to the ISP be sent to DMHMR within fourteen (14) days of the effective date the change occurs with the SCL recipient;
         4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;
         5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;
         6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;
         7. Timely distribution of the ISP, crisis prevention plan, assessment, and other documents to chosen SCL service providers;
         8. Providing an SCL recipient and chosen SCL providers twenty-
four (24) hour telephone access to a support coordination staff person; and 
9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be: 
   a. Individual-specific; 
   b. Annually reviewed; and 
   c. Updated as needed or required.
10. Assisting an SCL recipient in planning resource use and assuring protection of resources;
11. Exclusive of the provision of a direct service to an SCL recipient; 
12. Monthly face-to-face contact with an SCL recipient; 
13. Monitoring the health, safety and welfare of an SCL recipient; 
14. Monitoring of the supports provided to an SCL recipient; 
15. Documented by a monthly summary note which shall include: 
   a. Documentation of monthly contact with each chosen SCL provider; 
   b. Documentation of monthly face-to-face contact with an SCL recipient; and 
   c. Progress towards outcomes identified in the Individual Support Plan; 
16. Provided by a support coordinator who shall have a bachelor’s degree in a human service; 
17. Supervised by a support coordination supervisor who shall be a QMRP; 
18. A detailed monthly summary note which shall include: 
   a. The time, month, day and year for each note written; 
   b. The time, month, day and year for the time period the note covers; 
   c. Progress, regression and maintenance toward outcomes identified in the ISP; and 
   d. The signature, date of signature and title of the individual preparing the note; or 
   (n) Supported employment which shall be: 
   1. Intensive, on-going support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed; 
   2. Provided in a variety of settings; 
   3. Provided on a one-to-one (1 to 1) basis; 
   4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III); proof of which shall be documented in the SCL recipient’s file; 
5. Exclusive of work performed directly for the supported employment provider; 
6. Documented by: 
   a. A time and attendance record with shall include: 
      (i) The date of service; 
      (ii) The beginning and ending time; and 
      (iii) The signature, date of signature, and title of the individual providing the service; 
   b. A detailed monthly summary note which shall include: 
      (i) The time, month, day and year for each note written; 
      (ii) The time, month, day and year for the time period the note covers; 
      (iii) Progress, regression and maintenance toward outcomes identified in the ISP; and 
      (iv) The signature, date of signature and title of the individual preparing the note; and 
   7. Limited to forty (40) hours per week alone or in combination with community habilitation.

Section 5. Incident Reporting Process. (1) An incident shall be documented on an incident report form. 
(2) There shall be three (3) classes of incidents including: 
   a. A class I incident which shall: 
      1. Be minor in nature and not create a serious consequence; 
      2. Not require an investigation by the provider agency; 
      3. Be reported to the support coordinator within twenty-four (24) hours; 
   4. Be reported to the guardian as directed by the guardian; 
   5. Be retained on file at the provider and support coordinator agency; and 
   6. Be reported to the assistant Director of the Division of Mental Retardation, DMHMR or its designee, within ten (10) calendar days of discovery if the incident involves the use of restraint or a medication error, and shall include a complete written report of the incident follow up; 
   (b) A class II incident which shall: 
      1. Be serious in nature; 
      2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the support coordinator; and 
      3. Be reported by the provider agency to: 
         a. The support coordinator within twenty-four (24) hours of discovery; 
         b. The guardian within twenty-four (24) hours of discovery; 
         c. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and 
      (c) A class III incident which shall: 
         1. Be grave in nature; 
         2. Be immediately investigated by the provider agency, and the investigation shall involve the support coordinator; and 
         3. Be reported by the provider agency to: 
            a. The support coordinator within eight (8) hours of discovery; 
            b. The guardian within eight (8) hours of discovery; 
            c. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209; and 
            d. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If the incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day.

Section 6. SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department; 
(2) An individual shall be placed on the SCL waiting list based upon his region of origin in accordance with KRS 205.6317(3) and (4). 
(3) In order to be placed on the SCL waiting list, an individual shall submit to the department: a completed MAP-620, Application for MR/DD Services, which shall include a signature from a physician or a QMRP indicating medical necessity. 
(4) DMHMR or its designee shall validate the MAP-620 application information; 
(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF/MR/DD shall be September 22, 1995 or the date of admission to the ICF/MR/DD, whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section. 
(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF/MR/DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section. 
(7) The order of placement on the SCL waiting list for an individual not residing in an ICF/MR/DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows: 
   (a) Emergency: An immediate service is needed as determined by: 
      1. Abuse, neglect or exploitation of the individual as substantiated by DCBS; 
      2. The death of the individual's primary caregiver and lack of alternative primary caregiver; 
      3. The lack of appropriate placement for the individual due to: 
         a. Loss of housing; 
         b. Inappropriate hospitalization; or 
         c. Imminent discharge from a temporary placement; 
      4. Jeopardy to the health and safety of the individual due to the
primary caregiver's physical or mental health status; or
5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS;
(b) Urgent. A service is needed within one (1) year as determined by:
1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;
2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;
3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver;
4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;
(c) Future planning. A service is needed in greater than one (1) year as determined by:
1. The individual is currently receiving a service through another fund or place that meet his or her needs;
2. The individual is not currently receiving a service and does not currently need the service;
3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or
4. The individual is less than twenty-one (21) years of age.
(b) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.
9. A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his legal representative and support coordination provider if identified.
10. In determining chronological status, the original date of receipt of a MAP- 620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.
(a) During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone or in person for validation to determine category of need;
(b) Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and
(c) The department shall, at a minimum, annually update the waiting list during the birth month of an individual. The individual or his or her legal representative and support coordination provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program. The requested data shall be received by the department within thirty (30) days from the date of the letter.
12. Reassignment of category of need shall be completed based on the updated information and validation process.
13. An individual or his or her legal representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.
14. If an individual on the SCL waiting list in the emergency category of need is placed in an ICF/MR/DD, the category of need shall not change.
15. The criteria for removal from the SCL waiting list shall be:
(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;
(b) The individual is deceased;
(c) Notification of potential SCL funding is made and the individual or his or her legal representative declines the potential funding and does not request to be maintained on the SCL waiting list; or
(d) Notification of potential SCL funding is made and the individual or his or her legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.
1. The individual or legal representative shall have the burden of providing documentation of good cause, including:
(a) A signed statement by the individual or the legal representative;
(b) Copies of letters to providers; and
(c) Copies of letters from providers.
2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:
(a) Sixty (60) days for an individual who does not reside in a facility; or
(b) The length of the transition plan, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.
16. If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:
(a) The individual shall be moved to the future planning category; and
(b) The chronological date shall remain the same.
17. If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the SCL coordination provider.
18. The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date.
19. The SCL waiting list, excluding the emergency category, shall be fixed as it exists ninety (90) days prior to the expected date of offering a placement based upon the allocation of new funding and shall be resumed following the allocation of new funding.
20. An individual shall be allocated potential funding based upon:
(a) His or her region of origin in accordance with KRS 205.631(3) and (4);
(b) His or her category of need; and
(c) His or her chronological date of placement on the SCL waiting list.
21. To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:
(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and
(b) The SCL placement is not opposed by the individual or his or her legal representative.

Section 7. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.
(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.
(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:567.
(4) An individual shall not appeal a category of need specified in Section 6 of this administrative regulation. [Supports for community living-SCS] means community-based waiver services for an individual with a mental retardation or developmental disability.
(2) "Wellness-monitoring" means a process in which a registered nurse:
(a) Evaluates the level of wellness of a recipient to determine if:
1. The recipient is properly using the medical health services being provided; and
2. The health of the recipient is sufficient to maintain him in his place of residence without more frequent skilled nursing intervention; and
(b) Does not provide direct treatment to the recipient.

Section 2. General Coverage Provisions. (1) Except as provided in subsection (2) of this section, SCL services shall be provided to an individual eligible for Medicaid:
(a) Who meets patient status criteria for intermediate care for the mentally retarded in accordance with 907 KAR 1:092;
(b) Who is in a community resident living situation; and
(c) For whom SCL services are an alternative to institutionalization.
(2) SCL services shall not be provided to an individual who:
(a) Is an inpatient of a hospital;
(b) Is a resident of a nursing facility; or
(c) Is an inpatient of a facility for the mentally retarded.
(3) An individual eligible for Medicaid who is an inpatient or resident of a facility identified in subsection (2) of this section;
(a) May apply for an SCL service while the individual is an inpatient or resident of the identified facility; and
(b) Shall not receive the service while the individual is an inpatient or resident of the identified facility.

(4) The department may exclude from coverage an individual for whom the cost of SCL services exceeds the cost of the appropriate level of institutional care, if aggregate expenditures for the program are projected to exceed the corresponding institutional cost-of-care savings provided for in 42 U.S.C. 1396n(e)(3).

(5) The SCL service agency shall provide one (1) or more of the services as outlined in Section 4 of this administrative regulation.

(6) The federally designated Peer Review Organization (PRO) shall make the level of care determination as the agent of the department.

Section 3. Provider Participation. (1) A participating SCL service provider shall meet the applicable certification requirements for providing community-based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:675.

(2) Group homes shall be licensed by the Commonwealth of Kentucky in accordance with 907 KAR 20:078.

Section 4. Covered Services. (1) The following shall be covered SCL services:

(a) Residential support services provided to an individual residing in an alternative living arrangement, which shall be:

1. Group home;
2. Staffed residence;
3. Family home;

(b) Support coordination as follows:

1. Initiation and ongoing monitoring of admission, assessment and eligibility processes;
2. Development and monitoring of an individual support plan;
3. Ensuring access to and freedom of choice of SCL providers;
4. Monitoring of the health, safety and welfare of the individual by a support coordinator;
5. Ensuring the availability of a waiver service;
6. Providing sufficient information to an individual, parent or legal representative;
7. Establishing and overseeing a human rights committee for the review of overall procedures and individual behavior plans;
8. Acting on behalf of the individual to assist in gaining access to and receiving services from qualified SCL providers;
9. Providing assistance to the individual, his family or legal representative in covering another service as needed;

(b) Community living supports provided to an individual in the individual’s home and not in an alternative living arrangement as identified in paragraph (a) of this subsection, to assist, train or support in activities including:

1. Laundry services;
2. Meal preparation;
3. Housekeeping or maintenance;
4. Daily living skills;
5. Socialization;
6. Relationship building;
7. Leisure choices;
8. Participation in community activities;

(c) Behavioral support;

(d) Psychological services;

(e) Occupational therapy;

(f) Physical therapy;

(g) Speech therapy;

(h) Community habilitation services to provide nonresidential support training and intervention in activities that include:

1. Self-care;
2. Daily living skills;
3. Communication;
4. Behavior support;
5. Community living;
6. Social skills;
7. Participation in community activities;
8. Utilization of community resources;
9. Vocational training;
10. Supported employment for a participating individual. If the services are not otherwise available under a program funded by 29 U.S.C. 701 et seq. or Pub.L. 94-142;

(i) Respite care provided for the temporary relief of the staff or family of the individual;

(j) Wellness monitoring providing one (1) visit per month by a registered nurse to:

1. Evaluate the condition of an individual at risk of medical complications;
2. Refer the individual to the appropriate medical services;

3. Specialized medical equipment and supplies;

4. Personal emergency response systems;

5. Total room and board shall be excluded from coverage.

6. Total education related services that are required to be provided by the public school system under 20 U.S.C. 1400 et seq. shall be excluded from coverage.

Section 5. Prior Authorization for Services. (1) The department shall prior authorize an SCL service to ensure that

(a) Client status is met;

(b) There are adequate services for the needs of the individual;

(c) The services do not exceed the cost of the appropriate level of institutional care;

(d) An individual who is eligible for SCL services shall be given the choice of SCL services or traditional intermediate care facility services for persons with mental retardation or developmental disabilities.

Section 6. SCL Waiver List. Using the procedures established in the Department for Medicaid Services: Supports for Community Living Manual, which is incorporated by reference, an individual may be placed on a waiting list maintained by the department. The main components of the SCL waiting list shall be as follows:

(1) Application. An individual shall be placed on the SCL waiting list upon receipt of a completed application for support for community living services.

(2) SCL waiting list placement.

(a) The order of placement on the SCL waiting list shall be determined chronologically by date of receipt of the application by the department, unless an emergency situation exists which meets specified criteria as follows:

1. Death or loss of the immediate care provider;

2. Emergency hospitalization of the immediate care provider;

3. Other circumstances relating to the situation of the individual or relative to be considered by the department on a case-by-case basis.

(b) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list.

(c) A written notification of the date and placement on the SCL waiting list shall be mailed to the individual or his legal representative, and the support coordination provider if identified.

(3) Maintenance of the SCL waiting list. The department shall, at least annually, update the SCL waiting list. The individual or his legal representative and the support coordination provider shall be contacted in writing to verify the accuracy of the data on the SCL waiting list and the continued desire to pursue placement in the SCL Program. A written request to delete the requested data shall be received by the department within thirty (30) days from the date of the notice, excluding holidays and weekends.

(4) Criteria for removal from the SCL waiting list. The removal from the waiting list shall not prevent the submission of a new application at a later date for the individual.

(a) The criteria for removal from the waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or his legal representative;

2. SCL placement for services is offered and the individual or his legal representative refuses the offer of placement or does not, without good cause, complete the application process with the department within sixty (60) days of the placement allocation date; or

3. The individual is deceased.

(b) If the individual is removed from the SCL waiting list, written notification shall be mailed by the department to the individual or his legal representative and the SCL coordination provider.
Section 7. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:660.

(2) A decision to terminate an individual or to relocate placement subject to appeal shall not be final until an order is issued in accordance with 907 KAR 1:663.


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

MIKE ROBINSON, Commissioner
MARCI A R. MORGAN, Secretary

APPROVED BY AGENCY: July 16, 2007
FILED WITH LRC: July 22, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held, if requested, on September 22, 2003, at 9 a.m. Eastern Time in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, 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. 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 until close of business October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - SW-B, Frankfort, Kentucky 40621, (502) 564-7965, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Agency Contact Person: Stuart Owen or Teresa Goodrich (564-6204)

Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes policy for community living (SCL) covered services, coverage provisions, and provider qualifications.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish SCL covered services, coverage provisions, and provider qualifications.
(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 SCL covered services, coverage provisions, and provider qualifications.
(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 SCL covered services, coverage provisions, and provider qualifications.
(e) If 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 mandates that providers ensure that each staff person, prior to providing direct care, has tested negatively for tuberculosis within the past 12 months, requires providers to maintain documentation of tuberculosis test results, and reduces the provider administrative burden regarding occupational therapy, physical therapy, psychological services and speech therapy.
(b) The necessity of the amendment to this administrative regulation: The Cabinet for Health Services discovered that SCL service provider staff who tested positive for tuberculosis have been providing direct care; therefore, the amendment to this administrative regulation is necessary to protect the health, safety and welfare of SCL recipients. In addition, the reducing of the provider administrative burden is necessary to enable providers to more efficiently meet recipient needs.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by mandating that providers ensure that each staff person, prior to providing direct care, has tested negatively for tuberculosis within the past 12 months and by requiring providers to maintain documentation of employee tuberculosis test results in order to protect the health and welfare of recipients. The amendment also conforms to the content of authorizing statutes by reducing the provider administrative burden regarding occupational therapy, physical therapy, psychological services and speech therapy to enable them to more efficiently meet recipient needs.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by mandating that provider adhere to each staff person, prior to providing direct care, to have tested negatively for tuberculosis within the past 12 months and by requiring providers to maintain documentation of employee tuberculosis test results in order to protect the health and welfare of recipients. The amendment also conforms to the content of authorizing statutes by reducing the provider administrative burden regarding occupational therapy, physical therapy, psychological services and speech therapy to enable them to more efficiently meet recipient needs.
(e) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The entities affected include approximately 106 certified SCL providers and 1,872 SCL recipients.
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation is enacted to protect the health, safety and welfare of SCL recipients by ensuring that SCL provider staff, prior to providing direct care, have tested negatively for tuberculosis within the past 12 months. Additionally it mandates that tuberculosis test results be maintained for each staff person and also reduces the provider administrative burden to enable them to more efficiently meet recipient needs.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:

(1) Initially: This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. It establishes policy regarding tuberculosis testing and reduces the provider administrative burden in other areas and is not expected to have a fiscal impact on the Department for Medicaid Services.

(2) On a continuing basis: This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. It establishes policy regarding tuberculosis testing and reduces the provider administrative burden in other areas and is not expected to have a fiscal impact on the Department for Medicaid Services.

(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. SCL reimbursement is established in 907 KAR 1:155. Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are the funding sources to be used to implement and enforce 907 KAR 1:155.

(7) Provide an assessment of whether an 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not establish any fees, nor will it directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Dispa-
rate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et seq.

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services supports for community living (SCL) covered services, coverage provisions, and provider qualifications.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the Department for Medicaid Services SCL covered services, coverage provisions, and provider qualifications in accordance with federal regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not impose stricter (than federal) requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter (than federal) requirements are not imposed by this administrative regulation.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management
(Amendment)

907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.

RELATES TO: KRS 205.520, 38 U.S.C. 5503
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 194A.055, 205.520(3), 42 C.F.R. Part 435, 42 U.S.C. 1396a, d, r.5
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health 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 for the provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations.

Section 1. Definitions. (1) "Assigneed support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid Program.

(2) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in a home and community based services (HCBS) waiver program.

(3) "Community spouse maintenance standard" means the income standard to which a community spouse's otherwise available income is compared for purposes of determining the amount of the allowance used in the posteligibility calculation.

(4) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home, [or both], and may include thirty (30) or more consecutive days of receipt of HCBS, [or both].

(5) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Dependent child" means the couple's child, [including a child gained through adoption, [or both], who lives with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(8) "Dependent parent" means a parent of either member of a couple who lives with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(9) "Dependent sibling" means a brother or sister of either member of a couple, [including a half-brother, half-sister or sibling gained through adoption], who resides with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(10) "Excess shelter allowance" means an amount equal to the difference between the community spouse's verified shelter expenses and the minimum shelter allowance.

(11) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(12) [444] "Income" means money received from statutory benefits (Social Security, Veterans Administration pension, black lung benefits, railroad retirement benefits), pension plans, rental property, investments or wages for labor or services.

(13) [442] "Institutionalized Individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility [NF] and who is:

(a) An inpatient in:
   1. A nursing facility (NF);
   2. An intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) [ICF/MR]; or

(b) A medical institution;

(14) [442] "Institutionalized spouse" means an institutionalized individual who is in a medical institution or nursing facility, or participates in an HCBS waiver program, with a spouse who:

(a) Has a spouse who is not an institutionalized individual; and

(b) Is likely to remain institutionalized [or not in a medical institution or nursing facility or HCBS waiver program if the individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.

(15) [442] "Likely to remain in an institution" means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.

(16) "Living apart" means sharing a common household, but not due to arrangements, disability, illness, or other arrangement or household but does not include living in the same room in a long-term care facility.

(17) [440] "Minor" means the couple's minor child who:

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

(18) [440] "Monthly income" means an amount:

(a) Deducted from the posteligibility calculation for maintenance needs of a community spouse or other family member; and

(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.

(19) [442] "Other family member" means a relative of either member of a couple who:

(a) Is a;

1. Relative of either member of a couple who;

2. Is a;

1. [child who is either a] Minor or dependent child;
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2. [a] Dependent parent; or
3. Dependent sibling; and
(b) [of each member of a couple and who] Resides with the
community spouse.
(20) [a(23)] "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.
(21) [a(24)] "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state and local taxes; child support payments; or other court ordered obligation.
(22) [a(24)] "Resources" mean money and personal property or real property that an institutionalized individual or institutionalized individual's spouse:
(a) Owns;
(b) Has the right, authority or power to convert to cash; and
(c) Is not legally restricted from using for support and maintenance.
(23) [a(25)] "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.
(24) [a(26)] "Significant [or extreme] financial duress" means a member of a couple establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.
(25) [a(27)] "Spousal protected resource amount [amounts]" means resources deducted from a couple's combined resources for the community spouse in an eligibility determination for the institutionalized spouse.
(26) "Spousal share" means one-half (1/2) of the amount of a couple's combined countable resources, up to a maximum of $60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).
(27) [a(28)] "Spouse" means a person legally married to another under state law.
(28) [a(29)] "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, [(with revisions of the official income poverty guidelines applicable for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions)] multiplied by 150 percent.
(29) [a(30)] "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself in the community.
(30) [a(31)] "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.
(32) "Termination of institutionalization" means an individual has been out of a medical institution, nursing facility, or HCBS waiver program for thirty (30) consecutive days.
(33) [a(33)] "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

Section 2. Resource Assessment. (1) Pursuant to 42 U.S.C. 1396r-5(o)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources.
(2) The assessment shall contain the total value of the joint resources and computation of the spousal share.
(3) The department shall complete the assessment within forty-five (45) days following submission of complete [all necessary documentation or verification if provided in a timely manner].

Section 3. Protection of Income and Resources of the Couple for Maintenance of the Community Spouse.
(1) [a(35)] Treatment of income The following income provisions shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989.
(a) [a(36)] Separate treatment of income Except as provided in paragraph (b) of this subsection, during a month in which an institutionalized spouse is in the institution, income of the community spouse shall not be deemed available to the institutionalized spouse.
(b) [a(37)] Attribution of income In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for Medicaid, the provisions of 42 U.S.C. 1396r-5(b)(2) shall apply.
(2) [a(38)] Treatment of resources The following resource provisions shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989.
(a) Attribution of resources at the time of initial eligibility determination Except as provided in subsection 4(b) of this section, in calculating [determining] the resources of an institutionalized spouse at the time of an initial eligibility determination [application] for a benefit under Medicaid, the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.
(b) [a(40)] [Nonattributable resources] The following protected amounts shall be deducted from a couple's combined countable resources at the time of the determination of initial eligibility of the institutionalized spouse:
1. The greater amount of:
   a. The spousal share which shall not exceed a maximum of $60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g);
   2. The state resource standard; and
   2.a. If applicable, an additional amount transferred under a court order; or
   2.b. If applicable, an additional amount designated by a hearing officer.
(c) [a(41)] Exception to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:
   1. The institutionalized spouse has assigned to the department his right to support from the community spouse;
   2. The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment and the state has the right to bring a support proceeding against a community spouse without the assignment; or
   3. The department determines that denial of eligibility would work an undue hardship.
(d) Separate treatment of resources after eligibility for benefits is established.
   1. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for a Medicaid benefit, the resources of the community spouse shall not be deemed available to the institutionalized spouse.
   2. Resources of the institutionalized spouse protected for the needs of the community spouse shall be considered available to the institutionalized spouse if the resources are not transferred to the community spouse within six (6) months of the initial eligibility determination.
(e) [a(42)] [Excess value of an automobile] The equity value of an automobile in excess of the limits established by 907 KAR 1-645 shall not be included as a countable resource.
(f) [a(43)] [Protecting income for the community spouse] The following provisions shall apply with regard to protecting income for the com-
the community spouse as specified in subsection (4) of this section, the transfer of resource policies established by 907 KAR 1:650 shall apply.

(6)(a) The department shall send the notice specified in paragraph (b) of this subsection to both spouses upon:

1. Determination of eligibility for Medicaid of an institutionalized spouse; or
2. Request by:
   a. The institutionalized spouse;
   b. The community spouse; or
   c. A representative acting on behalf of either spouse.

(b) [Requirement for notice and fair hearings. The following notice and fair hearings requirements shall apply:

(a) Notice.
   1. The department shall send the notification required by subparagraph 2 of this paragraph to:
   a. Both spouses upon a determination of eligibility for Medicaid of an institutionalized spouse; or
   b. The spouse making the request upon a request by either the institutionalized spouse, the community spouse, or a representative acting on behalf of either spouse.
   2. The notice shall state:
   1. [a] The amount of the community spouse monthly income allowance; or
   2. [b] The amount of a family allowance, if any;
   3. [c] The method of computing the amount of the community spouse resources allowance; and
   4. [d] The spouse's right to a fair hearing in accordance with 907 KAR 1:560.

(7)(a) [Fair hearings.] Both the institutionalized spouse and the community spouse shall be entitled to a fair hearing in accordance with 907 KAR 1:560 if the spouse is dissatisfied with the action of the agency including determination of the following:

1. The community spouse monthly income allowance;
2. The amount of monthly income determined to be otherwise available to the community spouse;
3. The attribution of resources at the time of the initial eligibility determination; or
4. The determination of the community spouse resource allowance.

(b) [Revision of monthly maintenance needs allowance.] If either the institutionalized spouse or community spouse establishes during the hearing that the community spouse needs income above the level otherwise provided by the monthly maintenance needs allowance, due to an exceptional circumstance resulting in significant material dures, an amount adequate to provide the necessary additional income shall be substituted for the monthly maintenance needs allowance.

(c) [Revision of community spouse resource allowance.] If either spouse established during the hearing process that the community spouse resource allowance, [in relation to the amount of income generated by an allowance,] is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted for the community spouse resource allowance an amount adequate to provide the monthly maintenance needs allowance.

Section 4. Specified Individuals in Nursing Facilities. For an individual who is aged, blind, or has a disability and who is in a medical institution or nursing facility but does not have [nursing facility not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 3 of this administrative regulation], the following requirements with respect to income limitations and treatment of income shall apply:

1. In determining eligibility, the appropriate medically needy standard or special income level, disregards, and exclusions from income shall be used. In determining patient liability for the cost of institutional care, gross income shall be used as provided in subsection (2) and (3) of this section.

2. Income protected for basic maintenance shall be forty (40) dollars monthly plus statutory withholds. Mandatory withholds shall:

(a) Include minimum state and federal taxes; and
(b) Not include court-ordered child support, alimony, or similar
payment resulting from an action by the recipient.

(3) An amount excluded under a plan to achieve self-support (PASS), as an income related work expense (IRWE) or blind work expense (BWE) shall be considered an increased personal needs allowance for a Medicaid recipient except a recipient for whom a quarterly spenddown process as established in 907 KAR 1:840 is applicable.

(4) Income in excess of the amount protected for basic maintenance shall be applied to the cost of care except as follows:

(a) Available income in excess of the basic maintenance allowance shall be first attended to as needed to provide for the needs of a minor child up to the appropriate family size amount from the scale as established by 907 KAR 1:640, Section 2(1).

(b) Remaining available income shall be applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums or medical care recognized under state law but not covered under the state's Medicaid plan.

(5) The basic maintenance standard allowed the individual during the month of entrance into or exit from the nursing facility shall take into account the home maintenance costs.

(6) If an individual loses eligibility for a supplementary payment due to entrance into a participating nursing facility, and the supplementary payment is not discontinued on a timely basis, the amount of an overpayment shall be considered as available income to offset the cost of care to the Medicaid Program.

(7) A supplemental security income (SSI) or state supplementation payment received by a specified institutionalized Medicaid eligible individual in accordance with 42 U.S.C. 1382(e)(1)(G) shall be excluded from consideration as either income or a resource. The payment shall not be used in the posteligibility process to increase the patient liability.

(8) Ninety (90) dollars of Veteran's Administration (VA) benefits received by a veteran or the spouse of a veteran shall be excluded from consideration as income. The ninety (90) dollars shall not be counted in the eligibility or the posteligibility calculation.

(9) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in the posteligibility determination for a veteran or the spouse of a veteran residing in a non-state-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in the posteligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(10) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 1:850, Section 3(5), shall be counted in the posteligibility determination.

Section 5. Special Needs Contributions for Institutionalized Individuals. A voluntary payment made by a relative or other party on behalf of a nursing facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medicaid Program. A special service or item shall include television or telephone service, private room or bath, or a private duty nursing service.

MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: August 1, 2003
FILED WITH LRC: August 13, 2003 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 9 a.m. Eastern Time in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - SW B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Owen (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to determine Medicaid financial eligibility for low-income Kentucky residents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes directing the formulation of policies that develop and maintain the health of citizens of 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 providing guidelines and criteria for determining financial eligibility for Medicaid.

(2) If 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 revises community spouse income and resource deeming standards and procedures by calculating the allowable income and resources on an individual basis as opposed to allowing a maximum amount.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address the current budget issues and growth of Medicaid spending.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes directing the formulation of policies that develop and maintain the health of citizens of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by revising guidelines for Medicaid financial eligibility.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect institutionalized individuals who have community spouses.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Some of these individuals may retain fewer resources or deem less income to the community spouse.

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

(a) Initially: A savings is expected, but the amount of savings is indeterminable.

(b) On a continuing basis: Same

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 regula-
tion, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396r-5 requires state Medicaid agencies to take into account the financial needs and resources of a community spouse when determining Medicaid eligibility for an institutionalized individual. The Kentucky Medicaid program has met these requirements by establishing spousal impoverishment criteria in accordance with 42 U.S.C. 1396r-5.

2. State compliance standards. This administrative regulation amends Medicaid eligibility policy regarding the consideration of joint resources by establishing a state community spouse resource allowance at $20,000 or the spousal share, whichever is greater. This administrative regulation also establishes a community spouse income allowance to be used in the posteligibility determination which shall be the sum of the community spouse maintenance standard and the excess shelter allowance.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396r-5(f) allows state Medicaid agencies to establish a community spouse resource allowance as the greatest of an amount specified in the state plan or the spousal share. 42 U.S.C. 1396r-5(f) allows state Medicaid agencies to establish a minimum monthly maintenance needs allowance for each community spouse which is equal to the sum of 150% of the monthly federal poverty level for 2 members and an excess shelter allowance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Federal requirements allow state Medicaid agencies to establish a community spouse resource allowance amount and a minimum monthly maintenance needs allowance.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physician and Specialty Services

(AMENDMENT)

907 KAR 3:005. Physicians' services.

RELATES TO: KRS 205.520

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Common practice" means a contractual partnership in which a physician assistant administers health care services under the employment and supervision of a physician.

(2) "CPT code" means a code used for reporting of procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(3) "Department" means the Department for Medicaid Services or its designated agent.

(4) "Direct physician contact" means the physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(5) "Emergency care" means:
(a) Covered inpatient and outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or
(b) Emergency ambulance transport.

(6) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(7) "Global" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(8) "Graduate medical education program" or "GME" means one of the following:
(a) A residency program approved by:
1. The Accreditation Council for Graduate Medical Education of the American Medical Association;
2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;
3. The Commission on Dental Accreditation of the American Dental Association; or
4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or
(b) An approved medical residency program as defined in 42 C.F.R. 413.86(b).

(9) "Incidental" means a medical procedure is performed at the same time as a primary procedure and:
(a) Requires few additional physician resources; or
(b) Is clinically integral to the performance of the primary procedure.

(10) "Integral" means a medical procedure represents a component of a more complex procedure performed at the same time.

(11) "KenPAC" means the Kentucky Patient Access and Care System.

(12) "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.

(13) "Locum tenens" means a substitute physician:
(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and
(b) Whose services are paid under the participating physician's provider number.

(14) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(15) "Medical resident" means one of the following:
(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or
(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:
1. An individual with a:
   a. Temporary license;
   b. Resident training license; or
   c. Restricted license; or
   2. An unlicensed graduate of a foreign medical school.

(16) "Mutually exclusive" means two (2) procedures:
(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;
(b) Represent two (2) methods of performing the same procedure;
(c) Represent medically-impossible or improbable use of CPT codes; or
(d) Are described in current procedural terminology as inappro-
priate coding of procedure combinations.

(17) "Other licensed medical professional" means a health care provider other than a physician, physician assistant, advanced registered nurse practitioner, certified registered nurse anesthetist, nurse midwife, or registered nurse who has been approved to practice a medical specialty by the appropriate licensure board.

(18) "Physician assistant" is defined in KRS 311.140(6).

(19) "Screening" means the evaluation of a recipient by a physician to determine the presence of a disease or medical condition and if further evaluation, diagnostic testing or treatment is needed.

(20) "Supervising physician" means a licensed physician who directly oversees a physician assistant or other licensed medical professional.

(21) "Supervision" is defined in KRS 311.840(6).

(22) "Timely filing" means receipt of a claim to Medicaid:
(a) Within twelve (12) months of the date service is provided;
(b) Within twelve (12) months of the date retroactive eligibility is established; or
(c) In the case of eligibility for payment by Medicare, within six (6) months of the Medicare adjudication date.

(23) "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1) A participating physician shall be licensed as a physician in the state in which the medical practice is located.

(2) A participating physician shall comply with the terms and conditions established in the following administrative regulations:
(a) 907 KAR 1:005, Nonduplication of payments;
(b) 907 KAR 1:671, Conditions of Medicaid provider participation;
withholding overpayments, appeals process, and sanctions.

(c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation.

(3) A participating physician shall comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164.

(4) A participating physician shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of such decision prior to the delivery of service. If the provider accepts the recipient, the provider:

(a) Shall bill Medicaid rather than the recipient for a covered service;
(b) May bill the recipient for a service not covered by Medicaid as specified in Section 4 of this administrative regulation if the physician informs the recipient of noncoverage prior to providing the service; and
(c) Shall not bill the recipient for a service that is denied by the department on the basis of:
1. The service being incidental, integral, mutually exclusive, or global to a covered service;
2. Incorrect billing procedures;
3. Failure to obtain prior authorization for the service; or
4. Failure to meet timely filing requirements.

Section 3. Covered Services. (1) A covered service shall be a medically-necessary service which is:
(a) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and
(b) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:
(a) A service provided by a medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;
(b) A service provided by a locum tenens physician who provides direct physician contact;
(c) A radiology service, imaging service, pathology service, ultrasound study, echocardiographic study, electrocardiogram, electromyography, angiography, and other service that is usually and customarily performed without direct physician contact;
(d) The telephone analysis of emergency medical systems or cardiac pacemaker if provided under physician direction;
(e) A preauthorized sleep disorder service if provided in a physician operated and supervised sleep disorder diagnostic center;
(f) A telehealth consultation provided by a consulting medical specialist in accordance with 907 KAR 3:170;
(g) A service provided by a physician assistant in accordance with Section 6 of this administrative regulation.

(3) A service provided by an individual who meets the definition of other licensed medical professional shall be covered if:
(a) The individual is employed by the supervising physician;
(b) The individual is licensed in the state of practice; and
(c) The supervising physician has direct physician contact with the recipient.

Section 4. Service Limitations. (1) A covered service provided to a recipient placed in "lock-in" status in accordance with 907 KAR 1:677 shall be limited to a service provided by the lock-in provider unless:
(a) The service represents emergency care; or
(b) The recipient has been referred by the "lock-in" provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 1:034, Sections 3 through 5.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in the physician's office shall not be covered as a separate reimbursable service through the physician program:
(a) Rho (O) immune globulin injection;
(b) An injectable antiinflammatory drug;
(c) Medroxyprogesterone acetate for contraceptive use, 150mg;
(d) Penicillin G benzathine injection;
(e) Ceftriaxone sodium injection;
(f) Intravenous immune globulin injection;
(g) Sodium hyaluronate or hyaluron G-F for intra-articular injection;
(h) An intrauterine contraceptive device; or
(i) An implantable contraceptive device.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, shall be covered within the scope and limitations of these federal regulations.

(6) Coverage for a service designated as a psychiatry service or a CPT code and provided by a physician other than a board certified psychiatrist shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(7) Coverage for an evaluation and management service shall be limited to one (1) per calendar month, per recipient, per date of service.

(8) Coverage for a fetal diagnostic ultrasound procedure shall be limited to one (1) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(9) An anesthesia service shall be covered if administered by an anesthesiologist who remains in attendance throughout the procedure.

(10) Anesthesia service shall be covered if provided by an oral surgeon, an anesthesia service, including conscious sedation, provided by a physician performing the surgery shall not be covered.

(11) The following services shall not be covered:
(a) An acupuncture service;
(b) Allergy immunotherapy for a recipient age twenty-one (21) years or older;
(c) An autopsy;
(d) A cast or splint application in excess of the limits established in 907 KAR 3:010, Section 4(5) and (6);
(e) Except for therapeutic bandage lenses, contact lenses;
(f) A hysterectomy performed for the purpose of sterilization;
(g) Laparotomy;
(h) Paternity testing;
(i) A procedure performed for cosmetic purposes only;
(j) A procedure performed to promote or improve fertility;
(k) Radical keratotomy;
(l) A thermogram;
(m) An experimental service which is not in accordance with current standards of medical practice; or
(n) A service which has been determined not medically necessary by the department.
Section 5. Prior Authorization Requirements and KenPAC Referral Requirements. (1) The following procedures shall require prior authorization by the department prior to reimbursement:

(a) Allergy immunotherapy for a recipient under the age of twenty-one (21) years;

(b) Gastric restrictive surgery or gastric bypass surgery;

(c) A positron emission tomography (PET) scan;

(d) A procedure that is commonly performed for cosmetic purposes;

(e) A sleep disorder service;

(f) A surgical procedure that requires completion of a federal consent form or

(g) An unlisted procedure or service.

(2) Prior authorization by the department shall not be a guarantee of recipient eligibility. Eligibility verification shall be the responsibility of the provider.

(3) A physician shall request prior authorization by mailing or faxing a written request to the department with sufficient information to support medical necessity and, if applicable, any required federal consent forms.

(4) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered service shall be discontinued, at which time the covered service shall be available to all recipients without prior authorization.

(5) Except for a service specified in 907 KAR 1:320, Section 10(3)(a) through (g), a referral from the KenPAC PCP shall be required for a recipient enrolled in the KenPAC Program.

Section 6. Physician Assistant Services. (1) With the exception of a service limitation specified in subsections (2) and (3) of this section, a medically-necessary service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service is provided through direct patient interaction;

(b) The service is within the legal scope of certification of the physician assistant as specified in 201 KAR 5:175;

(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and

(d) The physician assistant complies with:

1. KRS 311.858; and

2. Sections 2(2) and (3) of this administrative regulation regarding physicians' services.

(2) The same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(10) of this administrative regulation;

(b) An anesthesia service;

(c) An obstetrical delivery service; or

(d) A service provided in assistance of surgery.

Section 7. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 8. Effective Date. The provisions of this administrative regulation shall be effective for dates of service on and after January 1, 2004. [Physicians Services. (1) Service as provided in subsection (2) of this section, a covered service shall be a service furnished by a physician through direct physician-patient interaction in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) A covered service shall include a service furnished by a recipient under the medical direction of a teaching physician in accordance with 42 C.F.R. Part 415.

(3) A physician assistant shall be considered the agent of a supervising physician with regard to coverage of a practice-related activity performed within his scope of certification in accordance with 201 KAR 0:175.

(4) For purposes of the Medicaid Program, an oral surgeon shall be:

(a) Treated in the same manner as a physician with regard to coverage for services within his scope of licensed practice; and

(b) Included in a referral to a physician, unless the context in which he is used is to the contrary.

(5) A service which is medically necessary, appropriate and related to the diagnosis and treatment of illness or injury shall be covered with the exception of those services established in Section IV.E. of the Physician's Manual incorporated by reference in this administrative regulation.

Section 2. Additional Limitations. (1) A patient placed in "lock-in" status due to over-utilization shall receive a service from his "lock-in" provider except in the case of emergency or if he receives a referral from his lock-in provider.

(2) Laboratory procedures:

(a) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 201 KAR 4:002 and 201 KAR 5:620.

(b) The professional component of a physician laboratory procedure performed by a board-certified pathologist in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of a preparation used in an injection shall not be considered a covered benefit, except as specified in Section IV.C.13. of the Physician's Manual.

(4) A telephone contact with a patient shall not be considered a covered benefit.

(5) A service performed or a recipient contact made exclusively by a nurse or another physician's employee shall not be covered under the physician's services component.


(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, 8:00 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
MARIC A R MORGAN, Secretary
APPROVED BY AGENCY: August 1, 2003
FILED WITH LRC: August 8, 2003 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2003 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until close of business October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7973.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Teresa Goodrich or Stuart Owen (502-564-6204)
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the participation requirements for physicians
and the coverage criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and limits the limitations for the provision of medically-necessary physician services to Medicaid recipients.

(2) If 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 removes policy which conflicts with adopted policy in 907 KAR 1:006 limiting cost sharing for a Medicare Part B physician service to the Medicaid allowed amount for the service; clarifies compliance requirements mandated by the Health Insurance Portability and Accountability Act; revises policy regarding coverage of allergy injections for children; and clarifies prior authorization requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment eliminates inconsistencies in applying coverage criteria for covered physician services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the provision of medically-necessary health services to the extent and within the scope of coverage allowed by state and federal law.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify criteria relating to the provision of medically-necessary physician services to Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All fee for service Medicaid recipients (approximately 500,000) and all physicians enrolled in the Kentucky Medicaid Program (approximately 15,000).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Implementing policy which is consistent with that established in other Medicaid regulations will provide greater interpretative clarity for physician providers; adding a requirement for prior authorization of certain services which may only be paid if proper medical and informed consent documentation is satisfied will ensure that provider's receive reimbursement for the service once it has been performed; and clarification of the "freedom of choice" concept will protect recipients from being billed for covered Medicaid services after a relationship with a provider has been established.

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

(a) Initially: Budget neutral.

(b) On a continuing basis: Budget neutral.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget does not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physician and Specialty Services

(907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560 [205.550]
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 42 C.F.R. 440.50, 447 Subpart B, 42 U.S.C. 1396a, b, c, d, s

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code which may be used in conjunction with another CPT code to denote that an additional service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the cabinet has contracted.

(4) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(5) "Department" means the Department for Medicaid Services or its designated agent.

(6) "Established patient" means one who has received professional services from the provider within the past three (3) year period.

(7) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(8) "Incidental" means a medical procedure is performed at the same time as a primary procedure and:

(a) Requires few additional physician resources; or

(b) Is clinically integral to the performance of the primary procedure.

(9) "Integral" means a medical procedure represents a component of a more complex procedure performed at the same time.

(10) "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(11) "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(12) "Medical Physician Fee Schedule" means a list of current reimbursement rates for physician services established by the department.

(13) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(14) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(15) "Mutually exclusive" means two (2) procedures:

(a) Are not reasonably performed in conjunction with one an-
other during the same patient encounter on the same date of service;
(b) Represent two (2) methods of performing the same procedure;
(c) Represent medically-impossible or improbable use of CPT codes; or
(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(15) "Physician assistant" is defined in KRS 311.840(3).

(17) "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.

(18) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(19) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code which takes into consideration the physician’s work, practice expense and liability insurance.

(20) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(21) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(22) "Usual and customary charge" means the uniform amount a physician charges to the general public for a specific medical procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be made to:
(a) The individual participating physician; or
(b) A physician group practice enrolled in the Kentucky Medicaid Program.

(2) Payment for a covered service shall be the lesser of:
(a) The physician’s usual and customary charge; or
(b) The amount specified in the Medicaid Physician's Fee Schedule established in accordance with Section 3 of this administrative regulation.

(3) If there is not an established fee in the Medicaid Physician's Fee Schedule, the payment shall be forty-five (45) percent of the usual and customary billed charge.

(4) Reimbursement for a service covered under Medicare Part B shall be made in accordance with 407 KAR 1:006, Section 3.

(5) Reimbursement to a participating provider shall be reduced by the amount of the required copayment in accordance with 407 KAR 1:004.

(6) Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as follows:
(a) A professional component of a service reported by the addition of the two (2) digit modifier twenty-six (26) is reimbursed at the product of:
1. The Medicare value assigned to the physician’s work; and
2. The dollar conversion factor specified in Section 3(1)(b) of this administrative regulation;
(b) A technical component of a service reported by the addition of the two (2) letter modifier "TC" is reimbursed at the product of:
1. The Medicare value assigned to the practice expense involved in the performance of the procedure; and
2. The dollar conversion factor specified in Section 3(1)(b) of this administrative regulation;
(c) A bilateral procedure reported by the addition of the two (2) digit modifier fifty (50) is reimbursed at two (2) times the amount assigned to the CPT code;
(d) An assistant surgeon procedure reported by the addition of the two (2) digit modifier eighty (80) is reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon;
(e) A procedure performed by a physician acting as a locum tenens for a Medicare-participating physician reported by the addition of the two (2) character modifier Q six (6) is reimbursed at the Medicare Physician's Fee Schedule amount for the applicable CPT code;
(f) An evaluation and management telehealth consultation service provided by a consulting medical specialist in accordance with 907 KAR 3:170 and reported by the two (2) letter modifier "GT" is reimbursed at the Medicaid Physician's Fee Schedule amount for the applicable evaluation and management CPT code; and
(g) A level II National HCPCS modifier designating a location on the body is reimbursed at the Medicaid Physician's Fee Schedule amount for the applicable code.

(7) Except for a service specified in paragraphs (a) and (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 407 KAR 1:029.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.
(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital or emergency room visit or in addition to a laboratory test.

(8) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:
(a) Included in the fee for the anesthesia if performed by the anesthesiologist;
(b) Included in the fee for the surgery if performed by the surgeon;
(c) Included in the fee for an office, hospital or emergency room visit if performed by the same provider.

(9) Reimbursement for a delivery shall include:
(a) Admission to the hospital;
(b) History and physical examination;
(c) Management of labor;
(d) Delivery; and
(e) Postpartum care.

Section 3. Reimbursement Methodology. (1)(a) With the exception of a service specified in subsections (2) through (5) of this section, a fee for a covered service shall be established by multiplying an RVU unit by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physicians’ Fee Schedule.

(b) The dollar conversion factor shall be twenty-nine (29) dollars and sixty-seven (67) cents.

(2) For the following services, reimbursement shall be the lesser of:
(a) The actual billed charge; or
(b) A fixed fee per procedure in accordance with the following:
  1. For administration of a vaccine to a Medicaid recipient under the age of eighteen (18) years, a fixed fee of a three (3) dollar and thirty (30) cent fixed fee per administration;
  2. For the following obstetrical services:
     a. Vaginal delivery only, $870;
     b. Vaginal delivery including postpartum care, $900;
     c. Cesarean delivery only, $870; and
     d. Cesarean delivery including postpartum care, $900;
  3. For the following delivery-related anesthesia services:
     a. Vaginal delivery, $200;
     b. Cesarean section, $320;
     c. Epidural for a vaginal delivery or cesarean section, $335; and
     d. Epidural for a planned vaginal delivery terminating in a cesarean section, $350;
  4. For an anesthesia add-on service provided to a recipient under the age of one (1) or over the age of seventy (70), twenty-five (25) dollars.

(3) A covered drug specified in 907 KAR 3:005, Section 4(4)(a) through (l) shall be reimbursed at the lesser of:
(a) Actual billed charge; or
(b) Average wholesale price (AWP) minus twelve (12) percent.

(4) Reimbursement for a covered service provided by a physician assistant shall be:
(a) Made to the employing physician; or
(b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.

(5)(a) Except for an item identified in paragraph (b) of this subsection, reimbursement for a service provided by a physician assistant shall be at the seventy-five (75) percent of the amount reimbursable to a physician in accordance with Sections 3 and 4 of this administrative regulation.
(b) If provided by a physician, an injectable antibiotic, antineoplastic chemotherapy agent or a contraceptive identified in 907 KAR 3:005, Section 4(4)(a) through (l), shall be reimbursed at the lesser of:
1. Actual billed charge; or
2. Average wholesale price (AWP) of the drug minus twelve (12) percent.

Section 4. Reimbursement Limitations. (1)(a) With the exception of chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service representing medical decision making of moderate or high complexity for an established patient shall be limited to one (1) evaluation and management service of either moderate complexity or high complexity per recipient, per diagnosis, per twelve (12) months.
(b) A claim for an evaluation and management service of moderate or high complexity in excess of this limit shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.
(2) The following reimbursement limitations shall apply to a non-delivery related anesthesia service:
(a) Reimbursement for an anesthesia service provided for a surgical procedure shall include:
1. Preoperative and postoperative visits;
2. Administration of the anesthetic;
3. Administration of fluids and blood incidental to the anesthesia or surgery;
4. Postoperative pain management; and
5. Preoperative, intraoperative, and postoperative monitoring services; and
(b) Except for an applicable add-on code, reimbursement for an anesthesia service shall be limited to one (1) CPT code and one (1) unit of anesthesia per operative session.
(3) With the exception of an anesthetic, contrast, or neuromuscular solution, administration of a substance by epidural injection for the control of chronic pain shall be limited to three (3) injections per six (6) month period per recipient.
(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:
(a) A preoperative service;
(b) An intraoperative service;
(c) A postoperative service and follow-up care within:
   1. Ninety (90) days following the date of major surgery; or
   2. Ten (10) days following the date of minor surgery; and
   (d) A preoperative consultation performed within two (2) days of the date of surgery.
(5) Reimbursement for the application of a cast or splint shall be limited to one (1) per ninety (90) day period for the same injury or condition.
(6) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:
(a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;
(b) The initial cast or splint applied during or following the surgical procedure; and
(c) A replacement cast or splint needed as a result of the surgical procedure if:
   1. Provided within ninety (90) days of the procedure by the same physician; and
   2. Applied for the same injury or condition.
(7) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:
(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1) of this administrative regulation; and
(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1) of this administrative regulation.
(8) For a multiple birth delivery in which one (1) or more infants are delivered by vaginal delivery immediately followed by delivery of one (1) or more infants by cesarean section:
(a) The cesarean section delivery shall be reimbursed at the lesser of:
1. The usual and customary billed charge; or
2. The amount specified in Section 3(2)(b)2c or d of this administrative regulation; and
(b) The vaginal delivery shall be reimbursed at fifty (50) percent of the amount specified in Section 3(2)(b)2a of this administrative regulation.
(9) When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.
(10) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician. [Department means the Department for Medicaid Services or its designee.]
(2) ECSPD means early and periodic screening, diagnosis, and treatment.
(3) Resource-based relative value scale (RBRVS) unit means a value-based on the service which takes into consideration the physician's work, practice expenses, liability insurance, and a geographic factor based on the costs of staffing and other resources required to provide the service in an area relative to national averages, services.
(4) Screening means the review of the health and health-related condition of a recipient by a physician to determine if further diagnosis or treatment is needed.
(5) Usual and customary charge means a uniform amount which the medical provider charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement - Exceptions. The following reimbursement exceptions shall apply:
(1)(a) The department shall reimburse a physician a three (3) dollar and thirty (30) cent administration fee for a vaccine administered to a Medicaid recipient under the age of twenty-one (21) up to these (3) administrations per physician, per recipient, per date of service.
(b) The department shall not reimburse a physician for the cost of a vaccine that is available free through the Vaccine for Children Program in accordance with 42 U.S.C. 1396a.
(c) There shall not be a limit on the number of administration fees for injectable antinecancer drugs which a physician may receive reimbursement per recipient per date of service.
(2)(a) A payment for the following specified obstetrical services shall be reimbursed at the lesser of:
1. The actual billed charge; or
2. A standard fixed fee paid by type of procedure.
(b) The obstetrical services and standard fixed fees shall be:
1. Vaginal delivery only, $370;
2. Vaginal delivery including postpartum care, $800;
3. Cesarean delivery only, $870; and
(3)(a) For a delivery related anesthesia service, a physician shall be reimbursed at the lesser of:
1. The actual billed charge; or
2. A standard fixed fee paid by type of procedure.
(b) Delivery related anesthesia procedures and standard fixed
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fees shall be:
1. Vaginal delivery, $200;
2. Epidural single, $345;
3. Epidural continuous, $335; and

(4) Payment for a service provided to an individual eligible for coverage under Medicare Part B shall be made in accordance with 907 KAR 1:005.

(5) A family practice physician practicing in a geographic area with no more than one (1) primary care physician per 5,000 population, shall be reimbursed as specified in KRS 205.560(10).

(6) A physician laboratory service shall be reimbursed at the Medicare allowable payment rate. For a laboratory service with no established Medicare allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

(7) A payment for an injection procedure for chemonucleolysis of a lumbar intervertebral disc shall be the lesser of:
(a) The actual billed charge; or
(b) A fixed upper limit of $703.50.

(8) Certain injectable antibiotics and antineoplastics, and contraceptives shall be reimbursed at the lesser of:
(a) The actual billed charge; or
(b) The average wholesale price of the medication supply minus ten (10) percent.

(9) For a practice-related service provided by a physician assistant, the participating physician shall be reimbursed at the lesser of:
(a) The usual and customary actual billed charge; or
(b) Seventy-five (75) percent of the physician's fixed upper limit per procedure.

(10) Reimbursement for a screening service provided to a recipient under the age of twenty-one (21) shall be in accordance with the following:

(a) Except the fifth year (kindergarten examination) and twelfth year (sixth grade examination), the fee for a complete screening, which shall include all items or procedures listed in 907 KAR 1:034, Section 3, appropriate to the age and health history of the recipient shall be seventy-five (75) dollars per recipient screened.

(b) For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened.

(c) For a partial screening, which shall include at least a health history and uncooked physical examination, the fee shall be thirty (30) dollars per recipient screened.

(d) For completion of a partial screening with some items or procedures appropriate to the age and health history of the recipient, the fee shall be forty (40) dollars per recipient screened.

(e) For an interperiodic screen, which shall be medically necessary to determine the existence of a suspected physical or mental illness and in addition to the regular periodicity schedule screenings, the fee shall be thirty (30) dollars per recipient screened.

(f) An amount payable to a physician for a service in accordance with this subsection shall not exceed the usual and customary charge of the provider for the service.

Section 5. (4) Supplemental Payments. (1) In addition to a payment made pursuant to Sections 2 through 4 and 5 of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician employed by a state-supported school of medicine that is part of a university health care system that includes a:

(a) [A] Teaching hospital; and
(b) [A state-owned] Pediatric teaching hospital; or
(c) An affiliation agreement with a pediatric teaching hospital.

(2) A supplemental payment plus other payments made in accordance with this administrative regulation shall not exceed the physician's charge for the service provided and shall be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;
(b) Consistent with the requirements of 42 C.F.R. 447.325; and
(c) Made on a quarterly basis. The supplemental payment shall be made for a service provided on or after April 2, 2004.

(4) In an amount which when combined with other payments made in accordance with the administrative regulation, does not exceed the physician's charge for a service he has provided.

(a) As a member of the medical school faculty, and
(b) For which the payment is made directly or indirectly to the medical school.

(b) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (4) of this section; and
(c) On a quarterly basis.

Section 6. (5) Appeal Rights. (1) An appeal of a department decision [negative action taken by the department] regarding a Medicaid recipient based upon an application of this administrative regulation [beneficiary] shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision [negative action taken by the department] regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision [negative action taken by the department] regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 7. Effective Date. The provisions of this administrative regulation shall be effective for dates of service on and after January 1, 2004.

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: August 1, 2003

FILED WITH LRC: August 8, 2003 at 4 p.m.

PUBLIC HEARING AT PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

Individuals interested in attending this hearing shall notify this agency in writing by September 15, 2003 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until close of business October 1, 2003. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Oven (502-564-6204)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reimbursement criteria for services provided by physicians to Medicaid recipients.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizen.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.
(d) How this administrative regulation currently assists or will...
assist in the effective administration of the statutes; This administrative regulation establishes the reimbursement criteria for payment of medically-necessary physician services to eligible Medicaid recipients.

(2) If 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 revises the existing policy regarding payment for Medicare Part B services and setting rates for unlisted procedures, and amends the relative value unit conversion factor for anesthesia services.
(b) The necessity of the amendment to this administrative regulation: This amendment eliminates inconsistencies in reimbursement for covered physician services.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment promotes provision of medically-necessary health services to the extent and within the scope of coverage allowed by state and federal law by establishing reimbursement criteria for these services.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish reimbursement policies which promote provision of medically-necessary physicians services to Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered Medicaid services impacts all physicians enrolled in the Kentucky Medicaid Program (approximately 15,000).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or, by the change if it is an amendment: Allowing for an add-on payment for a multiple birth delivery and raising the relative value unit conversion factor to $27.67 for anesthesia services should have a positive impact on these services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Budget neutral, depending on utilization.
(b) On a continuing basis: Sairie

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or, by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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 United States Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR FAMILIES AND CHILDREN
Office of Human Resource Management

(1) [Auxiliary review board] means an independently functioning local board within the Cabinet for Families and Children established to serve a particular facility or institution.

(2) "Board" means the cabinet's Institutional Review Board or "IRB" established by this administrative regulation (and attached to the Office of Program Support).

(3) "Cabinet" means the Cabinet for Families and Children.

(4) "Health risk project" means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of [the] human research subjects.

(5) [']Principal investigator" means the investigator involved in a research project that has responsibility for making decisions regarding the research study.

(6) "Research" is defined in 45 C.F.R. 46.102(d). "Research" shall have the meaning set forth in 45 C.F.R. 46.102(e) and in addition shall include descriptive and exploratory research activities that lay the groundwork for contributions to knowledge. Research shall be considered sponsored by the Cabinet for Families and Children if:

(a) It is supported financially by the cabinet;
(b) It uses staff or facilities provided by the cabinet or
(c) It is sponsored or endorsed by cabinet policy makers.

Section 2. Institutional Review Board. (1) An IRB [Institutional Review Board] for the Protection of Human Subjects is hereby created within the cabinet [is hereby created]. The board shall be attached to the Office of Program Support.

(2) The board shall:
(a) Consist of not less than five (5) nor more than eleven (11) members appointed by the secretary;
(b) Include members from [Members representing] various professional and academic fields including consideration of race, gender, and cultural backgrounds in accordance with 45 C.F.R. 46.102(a);
(c) Include one (1) member designated by the secretary to act as a chair; and
(d) Meet as needed to review a project.

(3) The secretary shall appoint an IRB administrator, within a cabinet department or office, who shall:
(a) Serve as liaison between the board and the U.S. Department of Health and Human Services;
(b) Maintain [shall be administered by department commissioners or by office heads and appointed by the secretary. The board shall meet as needed to review a project. The board shall include a chair appointed by the secretary of the cabinet.
(c) The Executive Director of the Office of Program Support shall designate the necessary staff, provide needed administrative support, and serve as liaison between the board and the U.S. Department of Health and Human Services. Staff assigned to the board by the Executive Director of the Office of Program Support shall ensure the following:

(a) Maintain all appropriate records;
(b) Conduct a preliminary review of a submitted project [as applicable to the board]; and
(c) [Refer to the board a project, to which this administrative regulation applies [as applicable to the board]; and
(d) [Make recommendations to the board on the disposition of an applicable project.

(4) The commissioner or executive director of the department or
office in which the IRB Administrator is appointed shall:
(a) Provide administrative support to the board; and
(b) Assign necessary staff.

Section 3. Project Submission. (1) A research project involving a human subject shall be submitted by the principal investigator to the board chair or board staff for review if it:
(a) Is conducted, supported financially, endorsed or approved by the cabinet;
(b) Uses staff or facilities provided by the cabinet;
(c) Involves a present or former client or beneficiary of the cabinet as a subject because of that relationship with the cabinet;
(d) Involves a present or former employee of the cabinet as a subject because of that relationship with the cabinet; and
(e) Involves a cabinet record relating to a present or former client, beneficiary, or employee of the cabinet.
(2) Project submission shall include the following, if applicable:
(a) A completed "Request for Research Activity Approval, Institutional Review Board for the Protection of Human Subjects" [it shall be the responsibility of the appropriate division director, commissioner, or office head to direct the program or project administrator under their jurisdiction to submit a research project involving a human subject to the cabinet on the board chair or board staff for possible consideration by the board. Project submission shall include three (3) copies where applicable of the following:
(1) Institutional Review Board request for approval of research activity form;
(2) A narrative description of the project's purpose and proposed research procedures;
(3) The research instrument to be used;
(4) A narrative description of how subject confidentiality shall be maintained [addressed];
and
(e) The research subject consent documents to be used.
(3) Unless first approved by the board, [form that shall be appropriate for the research project.
(2A) A modification in the research protocol or design of an approved research project, that may increase the level of risk to a subject, shall not be implemented.
(a) If an alteration becomes necessary, the principal investigator shall obtain prior approval of the board.
(b) Unless first approved by the board, if an alteration becomes necessary, it shall be the responsibility of the research administrator to obtain the prior approval of the board. Failure to obtain prior approval of the board may result in suspension or termination of all research activity, and the removal of the initial board approval and the requirement that all research activity be stopped.

Section 4. Scope of Board Approval. (1) Board approval of a project shall represent a judgment that human subjects are adequately protected, and shall not represent a judgment that a human subject has been adequately protected; and
(b) Not in any way represent a judgment concerning its ultimate research value; or
(b) A Policy decision regarding the value of the research to the cabinet.
(2) The board shall review a research project submitted as specified in Section 4(1) of this administrative regulation and not specifically exempted from board review, have the ultimate responsibility of reviewing all research projects involving a human subject, if the research is sponsored by the cabinet and if it is not specifically exempted from board review. If the primary review is performed by an approved auxiliary review board, the board shall either:
(a) Limit its review to the findings and recommendations of the auxiliary review board; or
(b) Conduct its own review of the project.
(3) A principal investigator (research administrator) may request a reconsideration of an adverse decision by the board by submitting a written request for reconsideration to the chair of the IRB [Institutional Review Board].
(4) The request shall be made within thirty (30) days of the principal investigator's receipt of notification of the adverse decision.
(5) Upon receipt of the request for reconsideration and any related documents shall be conveyed to the board chair for reconsideration. A reconsideration shall be made in the same manner as the initial review.

Section 5. Board Responsibilities. The board shall:
(1) [The board shall:] In coordination with IRB staff, the cabinet, and other appropriate groups, meet as needed to conduct board business; and [on a timely basis,]
(2) Review and determine disposition of an applicable research project [A review and recommendation concerning a project shall be consistent with the criteria specified] 45 C.F.R. §46.101 through 46.409.

Section 6. Responsibilities of Principal Investigators. (1) If a change is made in research design or protocol that affects the level of risk to a subject, confidentiality procedures, or consent procedures, the principal investigator shall submit the change [shall be submitted] before implementation, to the board for approval.
(2) The principal investigator shall report to the board:
(a) An unanticipated problem involving a risk to a subject or another individual, as a result of research activity, shall be reported to the board within ten (10) working days;
(b) A research subject death within seven (7) days of the principal investigator's knowledge of a death;
(c) Is, if a project is defined as a health-risk project by the board, the principal investigator shall report to the board a research subject death, which becomes known to him,) Whether the death appears likely to be related to participation in the research project.
(3) [A report of a death shall be made to the board in writing within seven (7) days of the principal investigator's knowledge of the death.
(4) The principal investigator shall submit to the board:
(a) A copy of final research findings and conclusions; and
(b) An annual report and request for reapproval of an ongoing research study that extends beyond one (1) year;
(c) Prepare an annual report and submit an annual request for reapproval of an ongoing research study; and
(d) Submit a copy of the final research findings and conclusions.

Section 7. Auxiliary Review Boards. (1) The chief executive of the cabinet institution or facility conducting research, subject to 45 C.F.R. 46.101 through 46.409, may form an auxiliary review board to conduct the required review of a project. The establishment of an auxiliary review board shall be approved by the secretary of the cabinet.
(2) An auxiliary review board, as an institutional review board, shall conduct a review consistent with this administrative regulation. The findings and recommendations of the auxiliary review board on a research study involving risk to a human subject shall be forwarded at least five (5) working days before initiation of the research to the board chair.
(b) The board shall respond to the auxiliary review board, within twenty-one (21) days of the board's receipt of the auxiliary review board's findings and recommendations.

Section 7. (2) Confidentiality. (1) Research information that identifies an individual subject shall be regarded as confidential in accordance with KRS 194.080(1), 45 C.F.R. 46.111(a)(7), and 164.512(i) and shall not be disclosed to a person outside the research project staff or published without the subject's prior written authorization.
(2) Raw or summary data may be released if the data does not identify a subject.

Section 8. References. [2] The decision of the board concerning the protection of a human subject shall be in accordance with [guided by]:
(1) The "Belmont Report Ethical Principles and Guidelines for the Protection of Human Subjects of Research[—report]. National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, edition [April 18, 1979]; and
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(2) 45 C.F.R. 46.101 through 45 C.F.R. 46.409.

Section 9. [40. Adoption Without Change. 45 C.F.R. 46.101 through 46.109, as effective July 1, 1998, are adopted without change.]

(c) The material may be inspected, copied, or obtained at the Cabinet for Families and Children, Office of Program Support, Fourth Floor, Center, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

Section 11.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research" [report], National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research [report], edition April 18, 1979; and


1. The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Families and Children, IRB Administrator [Office of Program Support, Fourth Floor, Center], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

TERESA SUTER, Executive Director
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: August 13, 2003

FILED WITH LRC: August 15, 2003 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 504-7900, (502) 504-9126 (fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an institutional review board (IRB) for research and protection of human subjects.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the rights and welfare of human subjects of research conducted by the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation creates an IRB for the cabinet to review and approve research of human subjects in conformity with 45 C.F.R. 46.101(a)(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards for the cabinet's IRB in accordance with 45 C.F.R. 46.101 to 46.109.

(2) If 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 moves the IRB responsibilities from a division level which allows the cabinet secretary to designate a department or office responsible for the IRB.

(b) The necessity of the amendment to this administrative regulation: Since the administrative regulation governs research of human subjects, the cabinet has determined that policy responsibility should be directly under the control of the cabinet secretary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is only technical in nature.

(d) How the amendment will assist in the effective administration of the statutes: Refer to (2c).

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: All departments and offices within the cabinet that fund, sponsor, or allow clients or staff to participate in a research study.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment is only technical in nature.

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

(a) Initially: There are no added or reduced costs to the cabinet.

(b) On a continuing basis: There are no continuing costs for this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funds for IRB expenditures are general, federal and agency funds. The expenditures are allocated to these funds indirectly via the cabinet's approved cost allocation plan.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied since application of policy is applied in a like manner for the protection in research of all human subjects.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 46.101-46.409
2. State compliance standards. KRS 194B.050(1)
3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 46.101-46.409
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Office of Kentucky's Affordable Prepaid Tuition Program
(New Administrative Regulation)

11 KAR 17:010. Definitions for 11 KAR Chapter 17.

RELATES TO: KRS 164A.700 to 164A.709
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709. This administrative regulation establishes the definitions for 11 KAR Chapter 17.

Section 1. Definitions. (1) "Application period" means the period during which applications for a prepaid tuition contract shall be received by the office.

(2) "Board" is defined by KRS 164A.700(2).

(3) "Eligible educational institution" is defined by KRS 164A.700(3).

(4) "Fund" is defined by KRS 164A.700(4).

(5) "KAPT" or "Kentucky's Affordable Prepaid Tuition Plan" means the name by which the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be marketed and promoted, in accordance with KRS 164A.700(4) and 164A.704(9).

(6) "Office" means the Tuition Account Program Office in the Kentucky Higher Education Assistance Authority that is responsible for administering the prepaid tuition accounts;

(7) "Prepaid tuition" is defined by KRS 164A.700(9).

(8) "Prepaid tuition account" is defined by KRS 164A.700(9).

(9) "Prepaid tuition contract" is defined by KRS 164A.700(10).

(10) "Projected enrollment date" means the estimated date that the qualified beneficiary shall be enrolled and attend an eligible educational institution.

(11) "Purchaser" is defined by KRS 164A.700(13).

(12) "Qualified beneficiary" is defined by KRS 164A.700(14).

(13) "Qualified postsecondary education expenses" is defined by KRS 164A.700(16).

(14) "Tuition" is defined by KRS 164A.700(15).

(15) "Value of the prepaid tuition account" is defined by KRS 164A.700(18).

MARICIA CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, five workdays prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 690-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines terms commonly used in the administration of Kentucky's Affordable Prepaid Tuition Program, 11 KAR Chapter 17.
(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the definitions for 11 KAR Chapter 17.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by establishing definitions for 11 KAR Chapter 17 pertinent to the Kentucky Affordable Prepaid Tuition Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, KHEAA must adopt regulations for a program transferred to it from another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill, passed and was signed into law. Part IX, Sec. 46, of that bill stipulated that "the board of directors of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority" and "the board of directors of the Kentucky Higher Education Assistance Authority shall promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement this provision." EO 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:010, promulgated by the original KAPT board, as a KHEAA regulation.

(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 4,200 participants with over 6,300 accounts in Kentucky's Affordable Prepaid Tuition Plan could potentially be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation establishes the definitions for 11 KAR Chapter 17.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost
(b) On a continuing basis: Same as (5)(a) above.
(c) What is the source of the funding to be used for the implementation and enforcement of this regulation: Agency receipts of payments by the participants in Kentucky's Affordable Prepaid Tuition Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. This administrative regulation does not directly or indirectly increase any fee, nor will it require any increase in funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and conse-
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Office of Kentucky’s Affordable Prepaid Tuition Program
(New Administrative Regulation)

11 KAR 17:040. Applying for a prepaid tuition contract.

RELATES TO: KRS 164A.700, 164A.705, 164A.707, 164A.709
STATUTORY AUTHORITY: KRS 164A.704(1), (6), 2003 Ky. Acts ch. 156, Part IX, Sec. 46, EO 2003-652

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709. KRS 164A.704(6) provides that the board shall develop requirements, procedures, and guidelines regarding prepaid tuition contracts. This administrative regulation establishes the procedure for applying for a prepaid tuition contract.

Section 1. Application. (1) A purchaser desiring to enter into a prepaid tuition contract shall submit a completed "Application for Enrollment" with the application fee required by 11 KAR 17:100 to the office during the application period. Only one (1) purchaser per prepaid tuition contract shall be allowed.

(2) After acceptance of the application and application fee by the office, the purchaser shall receive a prepaid tuition contract terms and conditions of payment and purchase;

(3)(a) The application shall become part of the prepaid tuition contract which shall be comprised of:
1. The application;
2. The prepaid tuition contract terms and conditions of payment and purchase;
3. The master agreement.

(b) The prepaid tuition contract shall become valid upon receipt by the office of:
1. The first installment payment due under the payment schedule;
or
2. The one (1) time lump sum payment representing the full purchase price of the prepaid tuition contract.

(c) The prepaid tuition contract shall include the following terms:
1. The specific amount and number of payments required under the tuition plan selected by the purchaser;
2. The specific terms under which the purchaser shall make payments to the fund, including the dates upon which each payment is due;
3. Consequences of default by the purchaser;
4. The name and enrollment date of the beneficiary, except in the case of a gift as described in KRS 164A.707(6) and 164A.709(10);
5. The terms under which an amendment to a prepaid tuition contract may be made;
6. The specific tuition plan selected by the purchaser;
7. The terms under which the office is obligated to pay tuition from the fund under a prepaid tuition contract; and
8. Any other term deemed appropriate by the board.

Section 2. Proof of Residency and Statement of Intent. In submitting an application, the purchaser shall demonstrate that the beneficiary of the prepaid tuition contract is a qualified beneficiary. The purchaser shall submit the following to the office to establish that the beneficiary is a qualified beneficiary:
1. If the beneficiary is a Kentucky resident, a signed and sworn statement from the purchaser certifying that the beneficiary is a Kentucky resident;
2. If the beneficiary is not a Kentucky resident, a signed and sworn statement from the purchaser stating that at the time of purchase of the prepaid tuition contract, the beneficiary intends to attend an eligible educational institution in Kentucky.


(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.

MARcia CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILEd WITH LRC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 13 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, 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. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7200, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedure for applying for a prepaid tuition contract.

(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by developing requirements, procedures, and guidelines regarding prepaid tuition contracts pursuant to KRS 164A.704(6).

(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 statute by establishing the requirements, procedures, and guidelines regarding prepaid tuition contracts.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, KHEAA must adopt regulations for a program transferred to it from another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill, passed and was signed into law. Part IX, Sec. 46, of that bill stipulated that "Notwithstanding KRS 164A.700 to 164A.709 and 393.015, the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority and "The board of directors of the Kentucky Higher Education Assistance Authority shall promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement this provision." EO 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:040, promulgated by the original KAPT board, as a KHEAA regulation.

(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 author-
izing statutes: 
(c) 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 4,200 participants with over 6,300 accounts in Kentucky’s Affordable Prepaid Tuition Plan could potentially be affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation establishes the requirements, procedures, and guidelines regarding prepaid tuition contracts.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: Same as (5)(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the participants in Kentucky’s Affordable Prepaid Tuition Program.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. This administrative regulation does not directly or indirectly increase any fees, nor will it require any increase in funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. 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 participants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Office of Kentucky’s Affordable Prepaid Tuition Program
(New Administrative Regulation)

11 KAR 17:050. Prepaid tuition contract prices, payments, and default.

RELATES TO: KRS 164A.704, 164A.705, 164A.707


NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709. KRS 164A.704(6) provides that the board shall develop requirements, procedures, and guidelines regarding prepaid tuition contracts. This administrative regulation establishes the requirements for prepaid tuition contract prices, payments, and default.

Section 1. Prepaid Tuition Contract Prices. (1) The board shall determine all tuition plans available for the purchase of prepaid tuition under a prepaid tuition contract.
(2) The prices for all tuition plans available for the purchase under a prepaid tuition contract shall be determined for each application period by the board.
(3) The purchase price determined by the board shall be expressed in installments in accordance with the payment schedule set by the office or in a lump sum, one (1) time payment representing the full purchase price of the prepaid tuition contract.

Section 2. Prepaid Tuition Contract Payments. (1) All payments due under a prepaid tuition contract shall be paid in cash in one (1) of the following forms:
(a) Automatic clearinghouse checks;
(b) Payroll deduction, if the payroll deduction plan has been approved by the office;
(c) Coupon books;
(d) Credit card approved by the office;
(e) Personal check;
(f) Electronic internet debit.
(2) A purchaser may request a change in the payment schedule by written request to the office. The request shall be accompanied by a change in payment schedule fee as required by 11 KAR 17:100. The request shall be subject to approval by the office based on the type of plan selected and its corresponding payment schedule.
(3) A purchaser may prepay any remaining payments due under his payment schedule at any time without penalty.
(4) A purchaser shall receive an annual statement showing a record of payments to the fund, the amount still due from the purchaser under the payment schedule, and any amounts paid by the fund under the prepaid tuition contract.
(5) Subject to proper payment in accordance with subsection (1) of this section, a purchaser may purchase a prepaid tuition contract with funds representing custodial property under the Kentucky Uniform Transfer to Minors Act, KRS 385.012 to 385.252, or another equivalent uniform transfer 0 gifts to minors act of another state.

Section 3. Default. (1) Failure to make timely payments in accordance with the payment schedule shall constitute default by the purchaser and assessment of a late payment fee as required by 11 KAR 17:100. A purchaser shall be notified in writing of the default and the assessment of the late payment fee.
(2) If the payment of the late payment fee and all delinquent amounts due under the payment schedule is not received by the office by the date set in the notice of default, the office shall accordingly reduce the value of the prepaid tuition account.
(3) If a prepaid tuition contract continues in default for more than 210 days, the board shall terminate the prepaid tuition contract and refund the contributions, subject to 11 KAR 17:090, Section 13(1) and (4).

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, 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. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 666-7290, fax (502) 666-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for prepaid tuition contract prices, payments, and default.
(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: This administrative regulation conforms to
the authorizing statute by establishing the requirements for prepaid
tuition contract prices, payments, and default.

(6) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation will assist in the effective administration of the stat-
utes by establishing the requirements for prepaid tuition contract
prices, payments, and default.

(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of: This is not an amendment of an
existing administrative regulation. However, pursuant to KRS
13A.312, KHEAA must adopt regulations for a program transferred
from another administrative body on the 2003 legislative ses-
sion, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill,
passed and was signed into law. Part IX, Sec. 46, of that bill stipu-
lated that *Notwithstanding KRS 164A.700 to 164A.709 and
393.015, the Commonwealth Postsecondary Education Prepay-
Tuition Trust Fund shall be governed and administered by the board
of (7) Provide an estimate of the administrative cost required to
implement this administrative regulation:

(a) How the amendment will change this existing administra-
tive regulation;

(b) The necessity of the amendment to this administrative regu-
lation;

(c) How the amendment conforms to the content of the authoriz-
ing statutes:

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

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: Approximately 4,200 participants with over 5,300
accounts in Kentucky’s Affordable Prepaid Tuition Plan could poten-
tially be affected.

(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change if it is an amendment: The
implementation of this administrative regulation establishes the re-
quirements for prepaid tuition contract prices, payments, and de-
fault.

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

(a) Initially: No cost.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the imple-
mementation and enforcement of this administrative regulation: Agency
receipts of payments by the participants in Kentucky’s Affordable
Prepaid Tuition Program.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No. This admin-
istrative regulation does not directly or indirectly increase any fees,
nor will it require any increase in funding.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This ad-
mnistrative regulation does not establish any fees, nor does this ad-
mnistrative regulation 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 in-
tended 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 proc-
ess” clauses of the Fourteenth Amendment of the U.S. Constitution
may be implicated as well as Sections 2 and 3 of the Kentucky Con-
stitution. The regulation provides equal treatment and opportunity for
all participants and recipients.
(5) Upon disability of a purchaser, all rights and obligations of the purchaser under a prepaid tuition contract shall be assigned to the named individual or entity as stated in the purchaser’s written designation accepted by the office. Absent written designation, the purchaser’s duly appointed attorney-in-fact or court ordered legal guardian or conservator, if applicable, shall become the purchaser’s successor-in-interest. Sufficient documentation evidencing the purchaser’s attorney-in-fact or legal appointment of guardian or conservator shall be submitted to the office.

(6) A purchaser’s prepaid tuition contract may be assigned upon the marital dissolution of a purchaser and his spouse in accordance with a court order assigning the prepaid tuition contract in a form accepted by the office. Upon the dissolution of marriage of a purchaser, all rights and obligations of the purchaser under a prepaid tuition contract may only be assigned pursuant to a court order assigning the prepaid tuition contract to the purchaser’s spouse.

(7) Any assignment of a prepaid tuition contract in accordance with this section shall be considered valid upon approval by the office and the assignee shall then become the purchaser of the prepaid tuition contract with all rights and obligations of the original purchaser. Upon the valid assignment of a prepaid tuition contract in accordance with this section, the prior purchaser shall retain no rights or interest in the prepaid tuition contract.

MARcia CARPETENBER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, 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. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 796, Frankfort, Kentucky 40622-0796, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for amending a prepaid tuition contract.
(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by developing requirements, procedures, and guidelines regarding prepaid tuition contracts pursuant to KRS 164A.704(6) and by authorizing a purchaser to amend certain terms of a prepaid tuition contract, including provisions of the prepaid tuition contract as permitted by the board pursuant to KRS 164A.707(2).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by establishing requirements for amending a prepaid tuition contract.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, the KHEAA must adopt regulations for a program transferred to it from another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill, passed and was signed into law. Part IX, Sec. 46, of that bill stipulated that "Notwithstanding KRS 164A.700 to 164A.709 and 393.015, the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority" and "The board of directors of the KHEAA shall promulgate administrative regulations, set fees, and adopt procedures as necessary to implement this provision." EQ 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:060, promulgated by the original KAPT board, as a KHEAA regulation.
(f) 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 4,200 participants with over 6,300 accounts in Kentucky’s Affordable Prepaunded Tuition Plan could potentially be affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation establishes requirements for amending a prepaid tuition contract.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: Same as (5)(a) above.
(6) Provide a description of the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the participants in Kentucky’s Affordable Prepaunded Tuition Program.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. This administrative regulation does not directly or indirectly increase any fees, nor will it require any increase in funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No, 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 participants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Office of Kentucky’s Affordable Prepaid Tuition Program
(New Administrative Regulation)


RELATES TO: KRS 164A.705
STATUTORY AUTHORITY: KRS 164A.704(1), (6), 2003 Ky. Acts ch. 156, Part IX, Sec. 46, EO 2003-652
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709. KRS 164A.704(6) provides that the board shall develop requirements, procedures, and guidelines regarding prepaid tuition contracts. This administrative
regulation establishes the procedure and guidelines for using prepaid tuition contract benefits if a qualified beneficiary is accepted and enrolled in an eligible educational institution.

Section 1. Payment of Value of the Prepaid Tuition Contract to an Eligible Educational Institution. (1) A purchaser shall submit sufficient documentation to the office indicating the admission of a qualified beneficiary at an eligible educational institution. Failure to timely submit this written notice to the office shall result in the assessment of a late notice fee as required by 11 KAR 17:100 and delay in the payment from the fund for qualified postsecondary education expenses.

(2) Payments for qualified postsecondary education expenses shall be paid by the fund only if the prepaid tuition contract has been paid up-to-date, including payment of all applicable administrative fees.

Section 2. Remaining Prepaid Tuition Contract Value. (1) If the value of the prepaid tuition account exceeds the amount paid by the fund to an eligible educational institution on behalf of a qualified beneficiary, the purchaser may make a written request to the office for payment of any remaining value for any qualified postsecondary education expenses.

(2) If a qualified beneficiary receives a scholarship which eliminates or reduces the amount of tuition to be paid to the eligible educational institution at which the qualified beneficiary is enrolled, the purchaser may request in writing to the office to:

(a) Use any remaining value of the prepaid tuition contract for the payment of other qualified postsecondary education expenses;

(b) Receive a refund for the academic year under KRS 164A.709(6).

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LGC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, five weekdays prior to the 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. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 30, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7296, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure and guidelines for using prepaid tuition contract benefits if a qualified beneficiary is accepted and enrolled in an eligible educational institution.

(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing requirements, procedures, and guidelines regarding prepaid tuition contracts pursuant to KRS 164A.704(6).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedure and guidelines for using prepaid tuition contract benefits if a qualified beneficiary is accepted and enrolled in an eligible educational institution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, KHEAA must adopt regulations for a program transferred to it from another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 56, the Executive Branch Budget Bill, passed and was signed into law. Part IX, Sec. 46, of that bill stipulated that "Notwithstanding KRS 164A.700 to 164A.709 and 393.015, the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority" and "The board of directors of the Kentucky Higher Education Assistance Authority shall promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement this provision." EO 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:070, promulgated by the original KAPT board, as a KHEAA regulation.

(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 4,200 participants with over 6,300 accounts in Kentucky's Affordable Prepaid Tuition Plan could potentially be affected.

(4) Provide an assessment of how the affected 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: The implementation of this administrative regulation establishes the procedure and guidelines for using prepaid tuition contract benefits if a qualified beneficiary is accepted and enrolled in an eligible educational institution.

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

(a) Initially: None

(b) On a continuing basis: Same as (3)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the participants in Kentucky's Affordable Prepaid Tuition Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. This administrative regulation does not directly or indirectly increase any fees, nor will it require any increase in funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. 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 participants and recipients.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Office of Kentucky's Affordable Prepaid Tuition Program
(New Administrative Regulation)

11 KAR 17:080. Terminating a prepaid tuition contract.

RELATES TO: KRS 164A.709
STATUTORY AUTHORITY: KRS 164A.704(1), (6), 2003 Ky. Acts ch. 156, Part IX, Sec. 46, EO 2003-652
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709. KRS 164A.704(6) provides that the board shall develop requirements, procedures, and guidelines regarding prepaid tuition contracts. This administrative regulation establishes the requirements for terminating a prepaid tuition contract.

Section 1. Termination. (1) To terminate a contract pursuant to KRS 164A.709(2)(a) or (5), the following documentation shall be submitted in a written request to the office to terminate a prepaid tuition contract:
(a) For termination due to the death or disability of a qualified beneficiary, the purchaser shall submit sufficient documentation evidencing the death or disability of the qualified beneficiary; or
(b) For termination due to a qualified beneficiary's receipt of a scholarship to an eligible educational institution, the purchaser shall submit sufficient documentation evidencing the beneficiary's eligibility of the scholarship and the scholarship amount.
(2) In accordance with KRS 164A.709(2)(a) or (5), a purchaser shall be notified of the date of the termination of the prepaid tuition contract and any applicable refund amount.

Section 2. Termination Due to Fraud or Misrepresentation. If a prepaid tuition contract is terminated by the board pursuant to KRS 164A.709(8) due to the fraud or misrepresentation of a purchaser or qualified beneficiary, a refund shall be:
(1) Paid in accordance with 11 KAR 17:090; and
(2) Offset by the applicable fees and costs incurred by the board as a result of the fraud or misrepresentation.

MARcia CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.

HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, 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. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 30, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Richard F. Casey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for terminating a prepaid tuition contract.
(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709.
(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 developing requirements, procedures, and guidelines regarding prepaid tuition contracts pursuant to KRS 164A.704(6).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the requirements for terminating a prepaid tuition contract.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, KHEAA must adopt regulations for a program transferred to it by another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill, passed and was signed into law. Part IX, Sec. 46, of that bill stipulated that "Notwithstanding KRS 164A.700 to 164A.709 and 393.015, the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority and the board of directors of the Kentucky Higher Education Assistance Authority shall promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement this provision." EO 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:080, promulgated by the original KAPT board, as a KHEAA regulation.
(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 4,200 participants with over 6,300 accounts in Kentucky's Affordable Prepaid Tuition Plan could potentially be affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation establishes the requirements for terminating a prepaid tuition contract.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: Same as (5)(a) above.
(6) Provide an analysis of whether an increase in fees or funding will be necessary to implement this administrative regulation:
(a) No, changes have been made to the regulation to ensure that there is no additional cost to the agency.
(b) No, changes have been made to the regulation to ensure that there is no additional cost to the agency.
(c) No, changes have been made to the regulation to ensure that there is no additional cost to the agency.
(7) Provide an analysis of whether an increase in fees or funding will be necessary to implement this administrative regulation:
(a) No, changes have been made to the regulation to ensure that there is no additional cost to the agency.
(b) No, changes have been made to the regulation to ensure that there is no additional cost to the agency.
(c) No, changes have been made to the regulation to ensure that there is no additional cost to the agency.
(8) Provide an analysis of whether or not this administrative regulation establishes an extension of the number of participants or whether any increase in fees or funding is required:
(a) Changes have been made to ensure that there is no additional cost to the agency.
(b) Changes have been made to ensure that there is no additional cost to the agency.
(c) Changes have been made to ensure that there is no additional cost to the agency.
(9) TIERING: Is tiering applied? No, 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 participants and recipients.
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

KEN TUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Office of Kentucky’s Affordable Prepaid Tuition Program
(New Administrative Regulation)

11 KAR 17:090. Refunds and transfers.

RELATES TO: KRS 164A.709
STATUTORY AUTHORITY: KRS 164A.704(1), (6), 2003 Ky. Acts ch. 156, Part IX, Sec. 46, EO 2003-652
N E C E S S I T Y, F U N C T I O N, A N D CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709. KRS 164A.704(6) provides that the board shall develop requirements, procedures, and guidelines regarding prepaid tuition contracts. KRS 164A.709 authorizes refunds and transfers from a prepaid tuition contract. This administrative regulation establishes the requirements for refunds and transfers from a prepaid tuition contract.

Section 1. Refunds. (1) A purchaser shall make a written request to the office for any refund that may be due to him from a prepaid tuition contract in accordance with 11 KAR 17:080, Section 1.

(2) All requested refunds shall be subject to approval by the office.

(3) A purchaser shall be notified of the amount of refund due. Any outstanding administrative fees required by 11 KAR 17:100 shall be deducted from the amount of the refund.

(4) All refunds shall be paid to the purchaser by the office from the fund in either a one (1) lump sum payment or installment payments. If a refund is paid to the purchaser in installment payments, interest shall not accrue on the installment payments.

Section 2. Transfers. (1) A prepaid tuition account may be transferred to another qualified tuition program as defined in 26 U.S.C. 529 in accordance with this section and applicable provisions of 26 U.S.C. 529. A purchaser shall make a written request for transfer of funds from the prepaid tuition account to another qualified tuition program and submit sufficient documentation, as requested by the office, to confirm the qualified status of the recipient tuition program.

(2) Upon transfer of a prepaid tuition account, the purchaser’s prepaid tuition contract shall be terminated and considered null and void and the purchaser shall retain no claim or right to payment of any amount from the fund.

(3) A transfer shall:

(a) Consist of all contributions made to the KAPT account; and

(b) Not be a portion of contributions made to the prepaid tuition account.

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by Monday, September 15, 2003, five weekdays prior to the 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. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 30, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for refunds and transfers from a prepaid tuition contract.

(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations to implement KRS 164A.700 to 164A.709.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by developing requirements, procedures, and guidelines regarding prepaid tuition contracts pursuant to KRS 164A.704(6).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 164A.709 by establishing the requirements for refunds and transfers from a prepaid tuition contract.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, KHEAA must adopt regulations for a program transferred to it from another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill, passed and was signed into law, Part IX, Sec. 46, of that bill stipulated that “Notwithstanding KRS 164A.700 to 164A.709 and 393.015, the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority” and “The board of directors of the Kentucky Higher Education Assistance Authority shall promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement this provision.” EO 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:090, promulgated by the original KAPT board, as a KHEAA regulation.

(b) How the amendment will change this existing administrative regulation:

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

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

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

(f) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,200 participants with over 6,300 accounts in Kentucky’s Affordable Prepaid Tuition Plan could potentially be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation establishes the requirements for refunds and transfers from a prepaid tuition contract.

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

(a) Initially: None

(b) On a continuing basis: Same as (5)(a) above.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the participants in Kentucky’s Affordable Prepaid Tuition Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. This administrative regulation does not directly or indirectly increase any fees, nor will it require any increases in funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(TIERING: Is tiering applied? No. Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and conse-
VOLUME 30, NUMBER 3 – SEPTEMBER 1, 2003

Kentucky Higher Education Assistance Authority
Office of Kentucky’s Affordable Prepaid Tuition Program
(New Administrative Regulation)

11 KAR 17:100. Administrative fees.

RELATES TO: KRS 164A.701(6), 164A.704(1), 164A.709(4)
STATUTORY AUTHORITY: KRS 164A.701(6), 164A.704(1),
(6), 164A.709(4), 2003 Ky. Acts ch. 156, Part IX, Sec. 46, EO 2003-652
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164A.704(1) requires the board to promulgate administrative regu-
lations, set fees, and adopt procedures to implement KRS 164A.700
to 164A.709. KRS 164A.704(6) provides that the board shall de-
velop requirements, procedures, and guidelines regarding prepaid
tuition contracts. This administrative regulation establishes the ad-
ministrative fees related to a prepaid tuition contract.

Section 1. Payment of Fees. (1) All fees required under this
administrative regulation shall be paid in cash by means of the
method of payment authorized in 11 KAR 17:050, Section 2(1)(a)
through (f).
(2) A prepaid tuition contract benefit shall not be paid by the
office from the fund until all applicable administrative fees have been
paid by the purchaser.
(3) Upon notice to the purchaser, the office may reduce the
value of the prepaid tuition contract in an amount equal to the out-
standing administrative fees due from the purchaser.

Section 2. Application Fee. (1) A fifty (50) dollar application
fee shall be required for each application. This fee shall be separate
from any prepaid tuition contract payments due under a payment
schedule and shall be nonrefundable.
(2) The board shall determine the method of payment for the
application fee.

Section 3. Account Maintenance Fee. (1) All prepaid tuition
contract payments shall include a nonrefundable account mainte-
nance fee.
(2) For prepaid tuition contracts paid in a lump sum, the account
maintenance fee shall be ten (10) dollars per year until enrollment of
the qualified beneficiary in an eligible educational institution or ter-
mination of the contract.
(3) For prepaid tuition contracts that are paid in monthly install-
ments, the account maintenance fee shall be one (1) dollar per
month until enrollment of the qualified beneficiary in an eligible edu-
cational institution or termination of the contract.

Section 4. Termination Fee. (1) A fee of $150 or fifty (50) per-
cent of the total tuition plan payments made, whichever is less, shall
be assessed against the purchaser for the termination of a prepaid
tuition contract. The fee shall be exclusive of all other administrative
fees.
(2) This fee shall be waived if the prepaid tuition contract is ter-
minal due to the death or disability or scholarship of the qualified
beneficiary.

Section 5. Change in Beneficiary Fee. (1) A fee of twenty (20)
dollars shall be assessed to transfer the benefits of a prepaid tuition
contract to a new beneficiary.
(2) The fund shall waive this fee if:
(a) The designation of a new beneficiary is due to the death,
disability, or receipt of scholarship of the original qualified beneficiary;
and
(b) The purchaser:
1. Requests waiver of this fee by written request to the fund; and
2. Includes sufficient documentation of the death, disability, or
receipt of scholarship of the original qualified beneficiary.

Section 6. Change in Purchaser Fee. (1) A fee of twenty (20)
dollars shall be assessed to transfer the rights and obligations of a
prepaid tuition contract to a new purchaser.
(2) The fund shall waive this fee if:
(a) The designation of the substitute purchaser is due to the
death or disability of the purchaser; and
(b) The substitute purchaser:
1. Requests waiver of this fee in a written request; and
2. Includes sufficient documentation of the death or disability of
the purchaser.

Section 7. Change in Payment Schedule Fee. A fee of ten (10)
dollars shall be assessed for any change to a payment schedule
requested by a purchaser.

Section 8. Other Prepaid Tuition Contract Changes Fee. A fee of
ten (10) dollars shall be assessed for any other change not specifi-
cally listed in 11 KAR 17:050 that are made to a prepaid tuition con-
tract requested by a purchaser.

Section 9. Late Payment Fee. A fee of ten (10) dollars shall be
assessed each month for each payment made past its scheduled
date.

Section 10. Returned Payment Fee. A fee of fifteen (15) dollars
shall be assessed for any payment made to the fund that is returned
to the purchaser for insufficient funds or other reason which causes
the payment not to be processed. This fee shall apply to all prepaid
tuition contract payments and administrative fee payments that are
returned.

Section 11. Document Replacement. (1) In accordance with
KRS 61.874(3) and 61.876(3) and 200 KAR 1:020, a fee of ten (10)
cents per page shall be assessed for each document that the pur-
chaser requests.
(2) For documents requiring additional postage beyond the rate
for a first class letter and for documents requiring overnight delivery,
an additional fee shall be assessed equal to the cost of postage,
not to exceed fifteen (15) dollars.

Section 12. Late Notice Fee. (1) A fee of twenty (20) dollars
shall be assessed for any notice required under 11 KAR 17:070,
Section 1(1), which is received later than the deadline established
by the board.
(2) This fee shall be paid by the purchaser before any tuition
shall be paid to an eligible educational institution on behalf of the
qualified beneficiary.

Marcia Carpenter, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public
hearing on this administrative regulation shall be held on Monday,
September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort,
Kentucky. Individuals interested in being heard at this hearing shall
notify this agency in writing by Monday, September 15, 2003, 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. 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 be made unless
a written request for a transcript is made. If you do not wish to attend
the public hearing, you may submit written comments on the
proposed administrative regulation. Written comments shall be ac-
cepted until Tuesday, September 30, 2003. Send written notification
of intent to hear at the public hearing or written comments on the
proposed administrative regulation to the contact person: Rich-
ard F. Casey, General Counsel, Kentucky Higher Education As-
sistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798,
phone (502) 896-7290, fax (502) 896-7293.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:
(a) What this administrative regulation does; This administrative regulation establishes the administrative fees related to a prepaid tuition contract.
(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations, set fees, and adopt procedures to implement KRS 164A.700 to 164A.709.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by developing requirements, procedures, and guidelines regarding prepaid tuition contracts pursuant to KRS 164A.704(6).
(d) How this administrative regulation currently assists or will assist the administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the administrative fees related to a prepaid tuition contract.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, KHEAA must adopt regulations for a program transferred to it from another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill, passed and was signed into law. Part IX, Sec. 46, of that bill stipulated that "Notwithstanding KRS 164A.700 to 164A.709 and 393.015, the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority and "The board of directors of the Kentucky Higher Education Assistance Authority shall promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement this provision." EO 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:100, promulgated by the original KAPT board, as a KHEAA regulation.
(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 4,200 participants with over 6,300 accounts in Kentucky’s Affordable Prepaid Tuition Plan could potentially be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation establishes the administrative fees related to a prepaid tuition contract.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: Same as (5)(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the participants in Kentucky’s Affordable Prepaid Tuition Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation, nor will it require any increase in funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes the administrative fees related to a prepaid tuition contract.

(9) TIERING: Is tiering applied? No. 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 participants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Office of Kentucky’s Affordable Prepaid Tuition Program
(New Administrative Regulation)


RELATES TO: KRS Chapter 13B, 164A.700 to 164A.709
STATUTORY AUTHORITY: KRS 164A.704(1), (6), 2003 Ky. Acts ch. 156, Part IX, Sec. 46, the 2003-652
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.704(1) requires the board to promulgate administrative regulations, set fees, and adopt procedures to implement KRS 164A.700 to 164A.709. KRS 164A.704(6) provides that the board shall develop requirements, procedures, and guidelines regarding prepaid tuition contracts. This administrative regulation establishes the grievance procedure for interested parties to request review of a decision by the office relating to a prepaid tuition contract.

Section 1. Request for Review. (1) A purchaser, beneficiary, or related party affected by a decision of the office may request review of the decision by the board, which shall make a determination regarding the claim. The request shall be submitted in writing to the board and shall include the following information:
(a) Name and address of person requesting relief;
(b) Specific nature of relief requested;
(c) Name, address, and Social Security or tax identification number of the purchaser and beneficiary involved;
(d) Prepaid tuition contract number;
(e) Date of request;
(f) Each statute or administrative regulation involved; and the
g) Notarized signature of person requesting relief.
(2) The board shall suspend the payment of benefits under the prepaid tuition contract upon receipt of a request for review, if requested by the purchaser, beneficiary or related party.
(3) The board shall inform the purchaser, beneficiary, and related parties of the board’s decision in writing by certified mail citing the applicable terms and conditions of the prepaid tuition contract, applicable administrative regulations, and other applicable statutes on which the board’s decision was based. The board’s decision shall be made no later than 120 days following receipt of the request for review.

Section 2. Request for Administrative Hearing. (1) A claim that is denied by the board may be appealed by the affected party within sixty (60) days of the date of denial by the board. The appeal shall be submitted in writing to the board.
(2) Upon receipt of a request for an administrative hearing, the board shall set the date, time, and place of the hearing and forthwith notify the individual by regular U.S. mail.
(3) An administrative hearing conducted pursuant to this section shall be held in accordance with KRS Chapter 13B.

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: August 4, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, 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. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, September 30, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Richard F. Carey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Carey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the grievance procedure for interested parties to request review of a decision by the office relating to a prepaid tuition contract.
(b) The necessity of this administrative regulation: KRS 164A.704(1) requires the board to promulgate administrative regulations, sets fees, and adopt procedures to implement KRS 164A.700 to 164A.709.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by developing requirements, procedures, and guidelines regarding prepaid tuition contracts pursuant to KRS 164A.704(6).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the grievance procedure for interested parties to request review of a decision by the office relating to a prepaid tuition contract.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment of an existing administrative regulation. However, pursuant to KRS 13A.312, KHEAA must adopt regulations for a program transferred to it from another administrative body. In the 2003 legislative session, 2003 Ky. Acts ch. 156, the Executive Branch Budget Bill, passed and was signed into law, Part IX, Sec. 46, of that bill stipulated that "Notwithstanding KRS 164A.700 to 164A.709 and 393.015, the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall be governed and administered by the board of directors of the Kentucky Higher Education Assistance Authority" and "The board of directors of the Kentucky Higher Education Assistance Authority shall promulgate administrative regulations, sets fees, and adopt procedures as are necessary to implement this provision." EO 2003-652, signed by Governor Patton on June 26, 2003, also made administrative transfers related to the KAPT Program. Consequently, this proposed administrative regulation adopts the wording of and is essentially identical to 20 KAR 2:110, promulgated by the original KAPT board, as a KHEAA regulation.
(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 4,200 participants with over 6,300 accounts in Kentucky's Affordable Prepaid Tuition Plan could potentially be affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation establishes the grievance procedure for interested parties to request review of a decision by the office relating to a prepaid tuition contract.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: Same as (5)(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the participants in Kentucky's Affordable Prepaid Tuition Program.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. This administrative regulation does not directly or indirectly increase any fees, nor will it require any increase in funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equitable 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 participants and recipients.

COMMONWEALTH POSTSECONDARY EDUCATION
PREPAID TUITION TRUST FUND

Department of Treasury
(Repealer)


NECESSITY, FUNCTION, AND CONFORMITY: 2003 Ky. Acts ch. 156, Part IX, Sec. 46 requires the board of directors of KHEAA to govern and administer the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. KRS 13A.312(1)(a) requires that the administrative body from which authority has been transferred shall repeal the existing administrative regulations governing the subject matter. It is necessary to repeal 20 KAR 2:010 through 20 KAR 2:110 in order to remove the governance and administration of the program from the Kentucky State Treasurer and the original KAPT board administratively attached to the Kentucky State Treasurer.

Section 1. The following administrative regulations are hereby repealed:
(1) 20 KAR 2:010, Definitions for 20 KAR Chapter 2;
(2) 20 KAR 2:040, Applying for a prepaid tuition contract;
(3) 20 KAR 2:050, Prepaid tuition contract prices, payments, and default;
(4) 20 KAR 2:060, Amendment of a prepaid tuition contract;
(5) 20 KAR 2:070, Using prepaid tuition contract benefits;
(6) 20 KAR 2:080, Terminating a prepaid tuition contract;
(7) 20 KAR 2:090, Refunds and transfers;
(8) 20 KAR 2:100, Administrative fees; and
(9) 20 KAR 2:110, Grievance procedure.

JONATHAN MILLER, State Treasurer
APPROVED BY AGENCY: August 12, 2003
FILED WITH LRC: August 14, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: Apublic hearing on this administrative regulation shall be held on Monday, September 22, 2003, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 15, 2003, 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. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Jo Carol Ellis, Executive Director of KAPT, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7442, fax (502) 696-7373.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carol Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 20 KAR 2:010-2:110.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the 2003 Ks. Acts ch. 156, Part IX, Sec. 46 requires the board of directors of KHEAA to promulgate regulations necessary and advisable for carrying out the purposes of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation repeals those administrative regulations which the secretary has determined are not necessary.

Section 1. The following administrative regulations are hereby repealed:

(1) 200 KAR 5:025. Memoranda of agreement and memorandum of understanding by state agencies.

(2) 200 KAR 5:050. Central purchasing for political subdivisions.

(3) 200 KAR 5:304. Application to be placed on source list.

GORDON C. DUKE, Secretary
APPROVED BY AGENCY: July 22, 2003
FILED WITH LRC: August 7, 2003 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulations shall be held on September 25, 2003, at 10 a.m. in Room 363, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by September 18, 2003, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 200 KAR 5:025, 200 KAR 5:050, and 200 KAR 5:304.

(b) The necessity of this administrative regulation: This administrative regulation repeals those administrative regulations that the secretary of the Finance and Administration Cabinet has determined are not necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 45A.035 authorizes the secretary of the Finance and Administration Cabinet to promulgate administrative regulations necessary and advisable for carrying out the purposes of the Kentucky Model Procurement Code (KRS Chapter 45A).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment repeals administrative regulations that are no longer necessary.

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

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

(b) The necessity of the amendment to this 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: All state agencies that contract for goods and services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will have little or no impact on the current practices of state agencies.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(9) TIERING: Is tiering applied? N/A

KENTUCKY BOARD OF MEDICAL LICENSURE
(New Administrative Regulation)


RELATES TO: KRS 311.530 to 311.620
STATUTORY AUTHORITY: KRS 311.275, 311.565
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.275 and 311.565 authorize the board to promulgate administrative regulations regarding the expungement of records of its licensees/certificate holders.

Section 1. Definition. "Expungement" means that:

(1) The affected records shall be sealed;

(2) The proceedings to which they refer shall be deemed to have not occurred; and

(3) The affected party may properly represent that no record exists regarding the matter expunged.

Section 2. Minor Violations and Expungement Procedure. (1) The following violations are to be considered minor in nature:

(a) Failure to timely renew a license or certificate;

(b) Failure to timely obtain required continuing medical education;

(c) Failure to timely obtain required HIV/AIDS continuing education.

(2) A licensee/certificate holder seeking expungement of a record of a disciplinary action resulting from a violation designated in subsection (1) of this section shall, in accordance with KRS 311.275:

(a) Submit a written request to the board, no sooner than three (3) years following completion of any disciplinary sanctions imposed under the action sought to be expunged;

(b) Certify that the license/certificate holder has not been disciplined for any subsequent violation of KRS Chapter 311 during that three (3) year period; and

(c) Certify that the license/certificate holder has not previously had a minor violation expunged by the board.

(2) The board shall consider each request and may, if the conditions of subsection (2) of this section are satisfied, expunge all records relating to the disciplinary action being expunged.

DANNY M. CLARK, M.D., President
APPROVED BY AGENCY August 11, 2003
FILED WITH LRC: August 12, 2003 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 30, 2003 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 23, 2003, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2003. 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: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-8046, fax (502) 429-9923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation will define certain records of licensees/certificate holders that may be expunged.

(b) The necessity of this administrative regulation: KRS 311.275 was passed by the General Assembly in 2002 and directed the Board of Medical Licensure to write this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation meets statutory requirements in KRS 311.275 by setting forth the criteria for licensees/certificate holders to expunge certain records from their file.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards to allow licensee/certificate holders to expunge certain records from their file.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 12,450 licensed physicians and osteopaths in the Commonwealth of Kentucky. Approximately 561 certified physician assistants. Approximately 304 certified athletic trainers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Licensees/certificate holders would have the ability to petition the board to have minor disciplinary offenses removed from their record.

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

(a) Initially: $1,000

(b) On a continuing basis: $1,000
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? Present board funds will be used to implement this regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Present board funds will be used to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not establish any increase in fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FINANCE AND ADMINISTRATION CABINET
State Board of Licensure for Private Investigators
(New Administrative Regulation)

201 KAR 41:020. Application for licensure.
RELATES TO: KRS 329A.035, 329A.040(1)
STATUTORY AUTHORITY: KRS 329A.035, 329A.040(1)
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 329A.025 requires the State Board of Licensure for Private Investigators to evaluate the qualification of candidates for licensure as private investigators and private investigating companies. KRS 329A.035 establishes application requirements for private investigators and private investigating companies. This administrative regulation establishes the application requirements and process for licensure.

Section 1. An applicant for licensure as a private investigator shall:
(1) File a completed, signed and dated application with the board meeting the requirements set forth in KRS 329A.035 and the following additional requirements and information required by the board:
(a) Home telephone and facsimile numbers;
(b) Electronic mail address;
(c) Driver license number and state of issuance;
(d) Sex, race, height, weight, hair color and eye color;
(e) Citizenship and alias status;
(f) Proof of affiliation with a private investigation company;
(g) Licensure status information from other states and for other professions;
(h) Criminal history information;
(i) Military service status;
(2) Pay by certified check or money order an initial private investigating company application fee as established by 201 KAR 41:040, made payable to the Kentucky State Treasurer;
(3) Pay by certified check or money order a criminal background check and fingerprint fee pursuant to KRS 329A.040(1)(b) and 201 KAR 41:040, made payable to the Kentucky State Treasurer.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Private Investigator Application and Applicant Instructions", August 2003 edition;
(b) "Private Investigator Company Application and Applicant Instructions", August 2003 edition.
(2) This material may be inspected, copied, or obtained at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD L. DOTSON, Chairman
APPROVED BY AGENCY: August 15, 2003
FILED WITH AGENCY: August 15, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2003 at 1 p.m. at the Division of Occupations and Professions, State Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by September 16, 2003, 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 the opportunity to comment on the proposed administrative regulations. A 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 October 1, 2003. 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: Nancy L. Black, Executive Director, State Board of Licensure for Private Investigators, PO Box 1360, Frankfort, Kentucky 40602-1360, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy L. Black, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation establishes procedures and requirements for application for licensure by private investigators and private investigating companies.
(b) The necessity of this administrative regulation: The necessity of this new administrative regulation is to establish the procedures and requirements for application for licensure by private investigators and private investigating companies.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish the procedures and requirements for application for licensure by private investigators and private investigating companies.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation establishes procedures and requirements for application for licensure by private investigators and private investigating companies as mandated by statute.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative
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regulation: N/A - new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A - new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: N/A - new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: N/A - new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that approximately 150 private investigators are currently operating in Kentucky. Some investigators are members of the Kentucky Private Investigators Association, the only affected trade association operating in the state. The enabling statute exempts from licensure many investigators associated with law firms, law enforcement, state government, federal government, accountants, insurance companies, and others investigating on their own behalf. The enabling statutes prohibit cities, counties and other political subdivisions from regulating private investigators within the state.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation if new, or by the change if it is an amendment: The new administrative regulation will require private investigators and private investigating companies to complete an application and submit themselves to the jurisdiction of the board for licensure. Currently, private investigators are not licensed or regulated in the state.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Start-up costs associated with the Division of Occupations and Professions' implementation of a new occupational licensing board are approximately $55,000.
(b) On a continuing basis: Annual costs associated with the Division of Occupations and Professions support services are approximately $45,000.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation creates application fees associated with the licensure process, pursuant to the enabling statutes.
(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation does not directly establish fees, however, this new administrative regulation references fees which are created under 201 KAR 41:030.
(9) TIERING: Is tiering applied? No. Tiering was not applied. Application criteria, requirements, procedures and documentation are consistent for each applicant.

FINANCE AND ADMINISTRATION CABINET
State Board of Licensure for Private Investigators
(New Administrative Regulation)

201 KAR 41:030. Examination.
RELATES TO: KRS 329A.025(2)(c), 329A.035(3)(m)
STATUTORY AUTHORITY: KRS 329A.025(2)(c), 329A.035(3)(m)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(c) requires the board to promulgate administrative regulations creating an examination for private investigator applicants. This administrative regulation establishes the examination for private investigator applicants.

Section 1. Definitions. (1) The written examination shall be called the "Kentucky Private Investigator Examination".
(2) The exam shall be developed and administered by a board-approved examination contractor.
(3) The exam shall be administered by computerized or written delivery form presented at locations within the Commonwealth of Kentucky, to be determined by the contractor at least twice annually.
(4) The examination shall be structured and designed to measure the subject areas outlined in KRS 329A.025(2)(c).
(5) The examination passing score shall be determined and set by the board in consultation with the examination contractor.

Section 2. Conceal Requirements. (1) An applicant for examination shall:
(a) Submit a completed application for licensure as required by 201 KAR 41:020;
(b) Pay the applicable application fee(s) established in 201 KAR 41:040; and
(c) Pay the applicable examination testing fee as determined and administered by the examination contractor.
(2) Once the application has been approved by the board, the applicant shall sit for the examination within sixty (60) days of the date on the authorization-to-test letter, sent from the board.
(3) Applicants may sit for the examination at any approved examination contractor testing center or via any contractor and board-approved electronic testing method.
(4) Failure to take the examination within sixty (60) days of the authorization-to-test date shall lead to a forfeiture of application fees and necessitate a reapplication to the board.
(5) Applicants shall have six (6) months from the application approval date by the board to tender a passing exam score to the board. Failure to pass the examination within the six (6) month period requires a new application to the board.

RICHARD L. DOTSON, Chairman
APPROVED BY AGENCY: August 15, 2003
FILED WITH LRC: August 15, 2003 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2003 at 1 p.m. at the Division of Occupations and Professions, State Board of Licensure for Private Investigators, 511 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2003, 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 the opportunity to comment on the proposed administrative regulations. A 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 October 1, 2003. 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: Nancy L. Black, Executive Director, State Board of Licensure for Private Investigators, PO Box 1350, Frankfort, Kentucky 40602-1360, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy L. Black, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation establishes the examination as required for licensure as a private investigator.
(b) The necessity of this administrative regulation: The necessity of this new administrative regulation is to establish the examination as required for licensure as a private investigator.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation establishes the definitions and procedures for the examination as required for licensure as a private investigator as mandated by statute.
(d) If 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 - new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A - new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: N/A - new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: N/A - new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that approximately 150 private investigators are currently operating in Kentucky. Some investigators are members of the Kentucky Private Investigators Association, the only affected trade association operating in the state. The enabling statute exempts from licensure many investigators associated with law firms, law enforcement, state government, federal government, county and other political subdivisions from regulating private investigators within the state. All other private investigators must become licensed and therefore must submit to an examination, unless so waived by the board.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation will require private investigators to pass an examination and submit themselves to the jurisdiction of the board for licensure. Currently, private investigators are not licensed or regulated in the state and therefore no examination requirements exist.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0. Examination contractor to bear all expenses.
(b) On a continuing basis: $0. Examination contractor to bear the expense of the examination costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants. The examination costs are funded by licensee applicants and the examination contractors.

(7) Provide an assessment of whether an 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 new administrative regulation creates an examination required for the licensure process, pursuant to the enabling statutes, and therefore creating fees as either the licensee applicants.

(8) State whether or not this new administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation does not directly establish fees, however, this new administrative regulation references fees which are created under 201 KAR 41:030 and fees which will also be set and administered by the examination contractor.

FINANCE AND ADMINISTRATION CABINET
State Board of Licensure for Private Investigators
(201 KAR 41:040)

201 KAR 41:040. Fees.

RELATES TO: KRS 329A.025(2)(b), 329A.040(1)(b), 329A.045(4)
STATUTORY AUTHORITY: KRS 329A.025(2)(b), 329A.040(1)(b), 329A.045(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(b) requires the board to establish fees associated with the licensure of private investigators and private investigating companies. 329A.040(1)(b) requires the board to establish an application fee for licensure and for state criminal history background checks. KRS 329A.045(4) requires the board to establish a license renewal fee. This administrative regulation establishes the initial fee for licensure, the application and related fees, the licensure renewal fees and fee procedure for the licensure examination.

Section 1. Initial Application Fees. (1) The initial application fee for licensure as a private investigator and private investigating company shall be $100 each.
(2) The criminal history, background check and fingerprint fee shall be thirty-four (34) dollars.

Section 2. Initial Licensure Fees. (1) The fee for licensure as a private investigator shall be $500.
(2) The fee for company licensure as a private investigating:
(a) Sole proprietorship shall be $100;
(b) Firm, association, partnership, corporation, nonprofit organization, institution, or similar enterprise shall be $500.
(c) Branch office shall be fifty (50) dollars.

Section 3. Examination Fee. The fee(s) for administering and sitting for the written and/or computerized Kentucky Private Investigator Examination shall be determined by the vendor providing examination services to the board pursuant to 201 KAR 41:030 and to the contract with the board, pursuant to KRS 329A.025(3)(b).

Section 4. Renewal License Fee. (1) The fee for renewal of private investigator licenses shall be $250.
(2) The fee for renewal of private investigating company licenses shall be $250.

RICHARD L. DOTSON, Chairman
APPROVED BY AGENCY: August 15, 2003
FILED WITH LRC: August 15, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2003 at 1 p.m. at the Division of Occupations and Professions, State Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2003, five workdays prior to the hearing, of their intent to attend. If no notice 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 the opportunity to comment on the proposed administrative regulations. A 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 October 1, 2003. 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: Narcy L. Black, Executive Director, State Board of Licensure for Private Investigators, PO Box 1360, Frankfort, Kentucky 40602-1360, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Nancy L. Black, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation establishes the application, licensing and renewal fees as required for licensure as a private investigator and private investigating company.
(b) The necessity of this administrative regulation: The necessity of this new administrative regulation is to establish the application, licensing and renewal fees as required for licensure as a private investigator and private investigating company.
(c) How this administrative regulation conforms to the content of the enabling statutes: The board is required to establish the application, licensing and renewal fees as required for licensure as a private investigator and private investigating company.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation establishes the application, licensing and renewal fees as required for licensure as a private investigator and
private investigating company as mandated by statute.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A - new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A - new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that approximately 150 private investigators are currently operating in Kentucky. Some investigators are members of the Kentucky Private Investigators Association, the only affected trade association operating in the state. The enabling statute exempts from licensure many investigators associated with law firms, law enforcement, state government, federal government, accountants, insurance companies, and others investigating on their own behalf. The enabling statute prohibits cities, counties and other political subdivisions from regulating private investigators individually. If a private investigator becomes licensed and therefore must submit to application, licensure and renewal fees.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation will require private investigators to submit renewal fees and submit themselves to the jurisdiction of the board for licensure. Currently, private investigators are not licensed or regulated in the state and therefore no licensing fees exist.

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

(a) Initially: Start-up costs associated with the Division of Occupations and Professions implementation of a new occupational licensing board are approximately $5,000.

(b) Ongoing basis: Annual costs associated with the Division of Occupations and Professions support services are approximately $45,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation creates an examination required for the licensure process pursuant to the enabling statutes, and therefore creating fees as applied to the licensees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation does not directly establish fees; however, this new administrative regulation references fees which are created under 201 KAR 41:030 and fees which will also be set and administered by the examination contractor.

(9) TIERING: Is tiering applied? Yes, tiering was applied. Both private investigators and private investigating companies are required to be licensed by the enabling statute. All fees for individual private investigators are the same, therefore tiering was not applied to the individual licensees. Private investigating companies, however, are defined by KRS 329A.010(2) as being a "firm, association, sole proprietorship, partnership, corporation, nonprofit organization, institution or similar enterprise". The fee structure requires sole proprietorships to pay a $100 licensure fee, while all other company types will pay $500. The board determined that because of the nature of a sole proprietorship (1 investigator/owner), a $500 licensure fee, in addition to an individual licensure fee of $500 was onerous. It should be noted that in all other company structures but sole proprietorships, additional owners are present or business arrangements exist to reduce liability. Therefore, tiering has been applied for these reasons by the board.

FINANCE AND ADMINISTRATION CABINET
State Board of Licensure for Private Investigators
(tinew Administrative Regulation)

201 KAR 41:050. Code of professional practice and conduct.

RELATES TO: KRS 329A.025(2)(d)
STATUTORY AUTHORITY: KRS 329A.025(2)(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(d) requires the board to promulgate administrative regulations establishing a code of professional practice and conduct for private investigator licensees. This administrative regulation establishes the code of professional practice and conduct for private investigators.

Section 1. Code of Professional Practice and Conduct. A private investigator licensee shall:

(1) Adhere to the guidelines, policies, and procedures of the Kentucky Private Investigators Act in KRS Chapter 329A and administrative regulations contained in 201 KAR Chapter 41.

(2) Maintain honesty, sincerity, integrity, fidelity, morality and good conscience in all dealings with clients, other investigators, as well as other professions.

(3) Provide services in which they are qualified to perform.

(4) Refrain from accepting assignments which would be a personal or business conflict of interest. Preserve client confidentiality under any and all circumstances, unless required otherwise by law. Safeguard information and exercise due diligence to prevent the improper disclosure of that information.

(5) Ensure that all clients are dealt with justly, and impartially regardless of social, political, racial, ethnic, religious considerations, economic status, or physical characteristics.

(6) Perform his/her duties in accordance with all local, state and federal laws, as well as adhere to the highest moral principals of the profession.

(7) Make all reporting based upon truth and fact and shall express honest opinions on that basis.

(8) Explain to the full satisfaction to all clients any fees and charges associated with their case and to render a final factual report.

(9) Ensure any obligations and responsibilities in contracts and mutual agreements should be met in a timely manner, and the principle of appropriate and adequate compensation for those engaged in investigative work should never be abused.

(10) Assist, when necessary, law enforcement officers and all other duly constituted authorities.

(11) Ensure their conduct does not bring discredit to the investigative profession.

(12) Not maliciously injure the professional reputation or practice of colleagues.

RICHARD L. DOTSON, Chairman
APPROVED BY AGENCY: August 15, 2003
FILED WITH LRC: August 15, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on September 3, 2003 at 1 p.m. at the Division of Occupations and Professions, State Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2003, 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 the opportunity to comment on the proposed administrative regulations. A 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 October 1, 2003. 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: Nancy L. Black, Executive Director, State

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Financial Standards and Examinations Division
(New Administrative Regulation)


RELATES TO: 15 U.S.C. 6801, 6805(b), 6807
STATUTORY AUTHORITY: KRS 304.2-110(1), 15 U.S.C. 6801(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.010. The Gramm-Leach-Bliley Act as codified in 15 U.S.C. 6801(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards: (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer. This administrative regulation will establish the appropriate standards for licensure and for the Kentucky Insurance to safeguard customer information. The Gramm-Leach-Bliley Act extends particularly to financial institutions, however, this regulation applies to all licensees of the department regardless of whether or not the licensee is considered a financial institution for purposes of the Gramm-Leach-Bliley Act.

Section 1. Definitions. (1) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or that individual's legal representative.

(2) "Customer" means a consumer who has a customer relationship with a licensee.

(3) "Customer information" means nonpublic personal information about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the licensee.

(4) "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

(5) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(6) "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be registered or required to be registered pursuant to the Kentucky Insurance Code as defined in KRS 304.1-010

(7) "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

Section 2. Information Security Program. Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

Section 3. Objectives of Information Security Program. A licensee's information security program shall be designed to:

(1) Ensure the security and confidentiality of customer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(3) Protect against unauthorized access to or use of the infor-
mation that could result in substantial harm or inconvenience to any customer.

Section 4. Determined Violation. A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020.

Section 5. Effective Date. Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to this administrative regulation within 180 days of the effective date of this administrative regulation.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. or at http://dii.pvrky.gov/kentucky.

JANIE A. MILLER, Secretary and Commissioner
APPROVED BY AGENCY: July 29, 2003
FILED WITH LRC: August 5, 2003 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2003, at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 2003, five work 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 within the 30-day public comment period, which ends October 1, 2003. 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 McPeak or Melea Kelch, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6032, fax (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie McPeak or Melea Kelch

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for safeguarding customer information for all licensees of the Department of Insurance.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 15 U.S.C. 6801(b), which requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:
1. To ensure the security and confidentiality of customer records and information;
2. To protect against any anticipated threats or hazards to the security or integrity of such records; and
3. To protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.
(c) How does this administrative regulation conform to the content of the authorizing statutes: 15 U.S.C. 6801(b) requires the state insurance regulatory authorities to establish appropriate standards.
"RS 304.2-110 provides that the Commissioner of Insurance may take appropriate administrative actions necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation establishes standards for safeguarding customer informa-

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing minimum standards for safeguarding customer information and providing implementation examples to licensees.
(2) If 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 will not amend an existing administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all licensees of the department which includes, but is not limited to, agents, agencies, and insurance companies.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All licensees will need to implement minimum standards for safeguarding customer information. Several of these licensees, must already have similar standards in place because of federal regulations promulgated due to the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act of 1996.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Department of Insurance.
(7) Provide an assessment of whether an 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 funding will not be needed.
(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.
(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all licensees doing business in the Commonwealth of Kentucky.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 15 U.S.C. 6801 et seq.
2. This administrative regulation requires all licensees of the Department of Insurance, including but not limited to agents, agencies, and insurers to implement minimum standards to safeguard customer information. The security program developed by the licensee shall ensure the security and confidentiality of customer information and protect against anticipated threats and unauthorized access to customer information.
3. 15 U.S.C. 6801(b) states that insurance regulators "shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical and physical safeguards..." to protect security and confidentiality, to protect against anticipated threats, and to protect against unauthorized use of customer information and records.
4. This regulation adopts the federal standards but will impose additional requirements in accordance with the intent of congress in the Gramm-Leach-Bliley Act. The federal law applies to most insurers, brokers, and agents; this regulation applies to all entities regulated by the Department of Insurance. This regulation was based on a national model adopted by the National Association of Insurance Commissioners; all states are imposing similar standards by statute or regulation.
5. The federal law applies to financial institutions engaging in financial activities such as "[i]nsuring, guaranteeing, or indemnifying
against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for the purpose of the foregoing, in any state." 12 U.S.C. 1843. This regulation extends the application to all licensees of the department, including those licensees who might not be considered a financial institution. This application will hold all Kentucky licensees to the same standard, protect the privacy of Kentucky Citizens, and promote uniformity of state insurance regulation.
The August meeting of the Administrative Regulation Review Subcommittee was held on Thursday, August 7, 2003, at 9:30 a.m. in Room 149 of the Capitol Annex. Senator Damon Thayer, Co-Chair, called the meeting to order, and the roll call was taken. The minutes of the July 8, 2003 meeting were approved.

Present were:

Members: Senators Damon Thayer, Co-Chair; Senators Joey Penrodton, Richard Reiding, and Gary Tapp; Representatives James Bruce, and Jon David Reinhardt.

LRC Staff: Dave Nicholas, Donna Little, Donna Kemper, Karen Smith, Sarah Amburgey, Ellen Steinberg and Emily Caudill.

Guests: Representative Fred Nesler; Representative Paul Marcolle; Michael Moné, Board of Pharmacy; Nathan Goldman, Board of Nursing; Nancy Black, Kevin Brown, Lisa Shelley, Board for Proprietary Education; Mark Farron, Ann Stewart, Department of Agriculture; Sean Aller, John Lyons, Henry List, Carl Campbell, Jim Villines, Pam Carew, James McKenzie, Natural Resources and Environmental Protection Agency; Glenn Jennings, Wendy Boardman, Brenda Parker, Ralph Von Derau, Elizabeth Johnson, Department of Insurance; John Gray, Ann Gordon, Alex Reese, Debra Bahr, Jesse Williams, Frank Persinger, Trish Howard, Eric Friedlander, Cabinet for Health Services; Wendy Cumpton, Rosanne Barksley, Karen Doyle E. Shirley Elderidge, Cabinet for Families and Children; Fred Buckner, Vulcan Materials; Larry G. Kirk, Old Hickory Clay Co.; William C. Eddings, Bob Holt, Mark McGraw, Don Walker, Kentucky Crushed Stone Association; Tom Fitzgerald, Kentucky Resources Council; Russell Osborne, Rinker Materials, Quentin Walker, Jr., M.A. Walker; Harl O'Neal, Jr., Kentucky-Tennessee Clay Co., Tom Nugent, Nugent Sand Company; Helen Payne; William L. LeGrand; Elsie Ewbank; and Doug Jackson.

The Administrative Regulation Review Subcommittee met on Thursday, August 7, 2003, and submits this report:

Administrative regulations reviewed by the Subcommittee:

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, did not comply with statutory requirements and were deficient:

Natural Resources and Environmental Resources Cabinet: Department for Surface Mining Reclamation and Enforcement: Surface Effects of Noncoal Mining - 405 KAR 6 Definitions for 405 KAR Chapter 5. Hank List, Secretary, Carl Campbell, Commissioner, and Jim Villines, Branch Manager, represented the Cabinet. Representative Paul Marcolle, Tom Fitzgerald, Director, Kentucky Resources Council, Elsie Ewbank, Doug Jackson, and Helen Payne appeared in favor of these administrative regulations. Don Walker, President, Kentucky Crushed Stone Association, Harl O'Neal, Jr., Kentucky-Tennessee Clay Co., and Mark J. McGrow, Greenbaum, Doll & McDonald, appeared in opposition to these administrative regulations.

Secretary List stated that when Governor Patton ordered a moratorium on new permits for noncoal mining, he also ordered the Cabinet to review their existing regulatory scheme and promulgate new regulatory provisions that would better protect the public and the environment. In developing 405 KAR 5.001, 5.002, 5.003, 5.003A, 5.003B, 5.004, 5.005, 5.010, 5.075, and 5.080, the Cabinet had worked with the noncoal mining industry and those wanting stricter regulatory controls for the industry. Neither group was satisfied completely with the administrative regulations.

In response to a question by Representative Bruce, Secretary List stated that growth had brought citizens in closer proximity to noncoal mining operations. Mostly, it was those citizens who favored the new regulatory provisions.

In response to questions by Senator Pendleton, Secretary List stated that the catalyst for these administrative regulations was Governor Patton's interest in changing the direction and economy of Eastern Kentucky from mining to ecotourism, especially in the Pine Mountain area. Governor Patton wanted to ensure that the natural beauty of that area, and the scenic vista of the Pine Mountain linear park, would not be further marred by the extensive noncoal mining in that region. Because the regulatory provisions could not be limited to that region, the provisions applied to noncoal mining across the state. The noncoal mining operations would incur additional production costs to comply with the new regulatory provisions. The Cabinet was concerned about how the increased costs would financially impact the Commonwealth which was the largest purchaser of mined limestone products due to their use in highway projects. Additionally, the Cabinet had no projection about the marketing effect of the increased costs on the mining companies. After the public hearing and comment period, the Cabinet had amended these administrative regulations in response to some of the industry's concerns, but the Cabinet could not fully satisfy the industry and still carry out the Governor's directives.

Senator Pendleton stated that while he appreciated the ecotourism concerns for Pine Mountain, there needed to be a different solution than financially disadvantageous regulatory provisions that applied statewide.

In response to a question by Representative Lee, Secretary List stated that in the same Executive Order, the Governor had also ordered the Cabinet to study the impact of the new regulatory standards. However, the Transportation Cabinet's brief handwritten study report only indicated that the new standards would increase production costs by two (2) dollars a ton, for a total increase of $20,000,000.00.

Representative Reinhardt stated that a two (2) dollar a ton increase in cost was a twenty-five (25) percent increase which was substantial.

Representative Lee stated that he questioned why only the moratorium portion of the executive order was being enforced and not the portion regarding the financial impact study.

Representative Lee made a motion, seconded by Senator Pendleton, for the Subcommittee to request a copy of the financial impact study from the Transportation Cabinet. Without objection, it was so ordered.

In response to a question by Senator Tapp, Secretary List stated that whether these new mining standards increased production costs so significantly that Kentucky mines would no longer be able to compete with state mines depended on each mine's location, market, shipping method, and regional competition.

Senator Tapp stated that because these administrative regulations would increase the production costs of limestone, he was concerned about their financial impact on the Kentucky economy. Additionally, he was concerned about the resulting negative impact on Kentucky's economy if roads could not be built and maintained.

Senator Roeding stated that he disapproved of a regulatory scheme that would negatively impact the struggling economy. Instead, the Cabinet should encourage the noncoal industry and the adjoining landowners to work together to resolve any problems.

Representative Bruce stated that there were several concerns regarding this regulatory scheme: (1) While he appreciated Governor Patton's desire to protect Pine Mountain, he disagreed with his use of a statewide regulatory scheme to do so; (2) if the state wanted roads, culverts, walking paths and the like, crushed stone was required and that mandated excavation; (3) Additional regulatory requirements were not necessary for mines to exist harmoniously with surrounding areas because mines across the state were doing so already, such as the Georgetown quarry; (4) 405 KAR 5.060's slope requirement would prevent the mines from marketing the overburden and would require the use of more overburden than many of the mines generated; and (5) The increased production costs necessary for compliance would affect more than just the industry. Kentucky taxpayers would ultimately bear the burden because Kentucky was the largest purchaser of crushed stone.

Representative Bruce stated that if the financial impact study was not completed as mandated by the executive order, he questioned whether the Cabinet had the right to present these administrative regulations to the Subcommittee.
In response to a question by Representative Bruce, Subcommittee staff stated that there was a question about whether the Cabinet was relying on the executive order as its authorization for promulgating the administrative regulations. If so, it was not clear whether noncompliance with the order might call into question the authority for the administrative regulations.

Senator Fullerton stated that the Subcommittee should wait to review these administrative regulations until after the Subcommittee had received the financial impact study from the Transportation Cabinet.

In response to a question by Co-Chair Thayer, Secretary List stated that due to the Governor's strong interest in pursuing these administrative regulations, the Cabinet could not agree to defer their review.

In response to a question by Senator Roeding, Secretary List stated that 405 KAR 5:030 included a transportation plan because the largest complaint regarding noncoal mines was the transportation of the products and the resulting effect on the roads. He agreed that once the trucks left the mining sites, they were under the jurisdiction of the Transportation Cabinet. The Cabinet hoped that including transportation information in the permitting process would prevent many of the potential problems from developing.

Senator Roeding stated that he understood the benefits of the transportation plan but was concerned about its inclusion in 405 KAR 5:030 because it exceeded the Cabinet’s statutory authority to promulgate administrative regulations. The plan would be better established by statute rather than through the administrative regulation process.

Senator Tapp stated that each truck paid a weight distance tax to help repair any damage to the roads.

Representative Reinhardt stated that the mines could ensure that trucks did not leave their sites overweight.

Tom Fitzgerald stated that these administrative regulations made very moderate changes to the regulatory requirements for noncoal mining. Any increased production costs resulting from the additional requirements should be compared to the current costs being paid by additional landowners for the damage caused by the mines. In most cases, the affected parties did not move to the mines but rather the mines opened in existing residential and agricultural areas. The mining placed at risk the landowners’ homes, their quality of life, the tranquility of their communities, and the safety of their families. Industry would never favor increased costs but the administrative regulations addressed important issues such as the replacement of water supplies, public notice for permit amendments, and reclamation bonds. Additionally, the transporation plan required by 405 KAR 5:030 did not exceed the Cabinet’s statutory authority because it was merely an informational requirement.

In response to questions by Representative Reinhardt, Mr. Fitzgerald stated that the groundwater use survey required by these regulatory provisions was necessary to establish a baseline amount of use so a mine would know how much groundwater it needed to replace.

Representative Marcotte stated that he wanted to address the current mining permit process because it was deficient. During the permit process for the Gallatin County mine, he informed the Cabinet of road and other safety concerns regarding the mine. The Cabinet informed him by letter that the existing administrative regulations in 405 KAR Chapter 5 did not allow them to consider those concerns in making the permitting decision. His frustration increased when the Transportation Cabinet informed him that it lacked sufficient funding to repair roadway damaged by mines yet would not help prevent the mine from receiving a permit. To rectify the legal tilt favoring the mines against the communities and the landowners, he prepared legislation addressing road safety issues for areas without planning and zoning commissions. It was heavily opposed. He would introduce further legislation during the 2004 session of the General Assembly if the problems were not alleviated by then.

Ms. Eubank stated that she lived on Highway 1992 and was concerned by its disintegration in the last six (6) months due to trucks from the nearby noncoal mine. The Transportation Cabinet refused the community's repair request because of insufficient funds. She showed pictures of the road damage to Subcommittee members.

In response to a question by Co-Chair Thayer, Secretary List stated that it was not in the Cabinet's purview to consider traffic and road safety issues when considering a mine application permit.

Co-Chair Thayer stated that to address the increased road safety issues, either the Transportation Cabinet needed to become involved or the General Assembly needed to enact legislation providing the Cabinet with the statutory authority to address these issues through the regulatory process.

Mr. Jackson stated that the mines caused problems in addition to the ones related to the roadways. The mines created dust containing carcinogens that came into nearby homes and injured families. The mine near his home had generated so much dust that he hadn't been able to live in his home. He showed pictures of the damage and dust.

Ms. Payne stated that the Gallatin County mine had generated so much dust that it had caused asthma and other lung problems in local community members. Additionally, the blasting at the mine had cracked their sidewalks and administrative regulations.

Mr. Walker stated that the Kentucky Crushed Stone Association represented about 100 members of an industry that annually produced about 70 million tons of crushed stone, provided about 1,500 jobs and impacted the state’s economy by about $500,000,000.00. If the new administrative regulations increased production costs by two (2) dollars a ton, their industry would incur $140,000,000.00 in additional costs. When the existing regulatory scheme was promulgated in 1995, the Cabinet had worked with them in developing the requirements. The Governor had not permitted the Cabinet to utilize them as a partner in developing the new regulatory provisions. Their members were already at a competitive disadvantage to operations in surrounding states because Kentucky's existing regulatory requirements were more stringent and because they were subject to additional taxes. If their members could not remain competitive with the operations in surrounding states, Kentucky would lose jobs, revenue, and taxes.

Mr. McGraw stated that on behalf of the Kentucky Crushed Stone Association, he wanted to emphasize several issues regarding the legality of these administrative regulations: (1) The Cabinet had not specified the statement of necessity for the administrative regulations, as required by KRS Chapter 13A; (2) The Cabinet had relied solely on the Interstate Mining Compact for its statutory authority to promulgate the administrative regulations; and (3) The Cabinet used the coal mining regulations as a template for these administrative regulations which was inappropriate because they were based on a federal plan tailored for the coal industry. Additionally, a national study had concluded that coal mining regulations should not be used as a basis for noncoal mining regulations because the mining methods were too different. Instead, the Cabinet should have based their regulatory scheme for noncoal mining on how surrounding states were regulating the industry.

Co-Chair Thayer stated that he encouraged the Kentucky Crushed Stone Association to work with the Gallatin County mine, Representative Marcotte, Secretary List, and the Transportation Cabinet to provide some relief to the community members near that mine. They should not be suffering from such deplorable living conditions. If the problem required a legislative solution, he and the Subcommittee were prepared to support Representative Marcotte in his efforts to produce one. He requested that the Association copy the Subcommittee on any correspondence regarding the Gallatin County mine and that it update the Subcommittee on the status of resolving that situation by Labor Day. Mr. Walker agreed to this request.

Senator Roeding requested that he be invited to participate in the meetings and correspondence for the Gallatin County mine as he was the state senator for that area.

Representative Bruce stated that he had not received any complaints regarding the rock quarry in Christian County because it was clean and had instituted beautification efforts. The crushed stone industry as a whole needed to pressure the Gallatin County mine to operate more responsibly.

Mr. O'Neal stated that the Kentucky-Tennessee Clay Company opposed these administrative regulations because they did not differentiate clay mining from the other forms of noncoal mining. When
Governor Patton issued the moratorium on noncoal mining permits, at their request, he lifted the moratorium for the clay industry in Western Kentucky. When the industry requested the same exemption from these administrative regulations, they were denied by the Cabinet.

In response to questions by Senator Roeding, Secretary List stated that these administrative regulations applied to the mining of clay as well as sand and gravel because they all involved excavation. Governor Patton also intended these administrative regulations to require greater reclamation of excavation sites so that they would be returned to their original contour or condition, to the extent it was technically feasible. Senator Campbell asked what part of the regulations needed to apply to the clay industry because there were significant environmental concerns associated with that industry in the Eastern portion of the state, such as acid mine drainage. The Cabinet could not exempt the clay industry in the western portion of the state from the provisions without violating the Constitution.

Senator Tapp made a motion, seconded by Representative Bruce, to find 405 KAR 5:001, 5:030, 5:035, 5:038, 5:045, 5:053, 5:064, 5:075, and 5:076 deficient. On a roll call vote, the administrative regulations were unanimously found deficient, with Co-Chair Thayer, Senator Roeding, Senator Tapp, Senator Pendleton, Representative Bruce, Representative Lee, and Representative Reinhardt voting in favor of the finding of deficiency.

Representative Bruce stated that he voted in favor of the deficiency finding because it was inappropriate for the Subcommittee to review these regulations without the prior ratification of the Executive Order by the Governor.

Representative Lee stated that he voted in favor of the deficiency finding because the General Assembly, rather than the Subcommittee, needed to decide the best way to address the myriad issues regarding noncoal mining operations in Kentucky. After the Subcommittee found the administrative regulations deficient, they, along with the other members of the General Assembly, were needed to commit to enacting legislation pertaining to noncoal mining with the same fervor that they had addressed coal mining.

Subcommittee staff stated that because the administrative regulations could remain in force despite the finding of deficiency, staff suggested that the Subcommittee entertain a motion to approve the suggested amendments for them so that they would be in compliance with the drafting and format requirements of KRS Chapter 13A.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to specify citations; and (3) to amend Sections 3 and 5 to provide general guidelines for Cabinet determinations; and (4) to provide various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, with agreement of the agency, the amendments were approved.

405 KAR 5:030 & E. Permit requirements. Subcommittee staff stated that it was the staff's position that the "Transportation Plan" in Section 20 of this administrative regulation did not comply with the Cabinet's statutory authority to promulgate administrative regulations pertaining to mining.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to include locations where permit applications may be submitted; (3) to amend Sections 5 and 25 through 30 to specify and include citations; (4) to amend Section 22 to include all requirements for public notice of the permit application; and (5) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:035 & E. Signs, markers, and safety barriers. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to specify citations; and (3) to amend Sections 3 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:038 & E. Blasting. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to provide a basis for the Cabinet's determination as to what constituted "appropriate mitigative measures"; (4) to amend Sections 1 and 3 to specify citations; and (5) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:045 & E. Protection of environmental resources. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to specify citations; and (3) to provide general guidelines for Cabinet determinations; and (4) to provide various Sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:053 & E. Replacement of water supply. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to specify citations; and (3) to provide general guidelines for Cabinet determinations; and (4) to provide various Sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:060 & E. Handling of materials. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to specify citations; and (3) to provide general guidelines for Cabinet determinations; and (4) to provide various Sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:075 & E. Contemporaneous reclamation. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Sections 1 and 3 to specify citations; and (3) to provide various Sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:080 & E. Reclamation bond. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to include authorizing language; (2) to amend Section 1 to specify citations; and (3) to provide various Sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Administrative regulations reviewed by the Subcommittee:

General Government Cabinet: Boards and Commissions: Board of Pharmacy

201 KAR 2:074. Pharmacy services in hospitals or other organized health care facilities. Michael Moné, Executive Director, represented the Board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to delete Section 6 because it repeated the statutory provisions, in violation of KRS 13A.120(2)(e) and (f). Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse programs. Nathan Goldman, General Counsel, represented the Board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMANCE paragraph to
clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:330. Standards for curriculum of prelicensure practical nurse programs. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Proprietary Education

201 KAR 40:040. Commercial driver license training school curriculum. Nancy Black, Executive Director, and Kevin Brown, Assistant Attorney General, represented the Board.

In response to a question by Representative Bruce, Ms. Black stated that the Board of Proprietary Education and this administrative regulation regulated the Commercial Driver License (CDL) training schools rather than the CDL applicants. However, she would investigate the legality of the chiropractic association's concern that school bus drivers were being advised against using chiropractors for physical examinations, in violation of state law.

In response to questions by Senator Roeding, Ms. Black stated that because the Transportation Cabinet rather than the Board regulated the CDL application and licensing procedures, the Board lacked the statutory authority to require CDL applicants to undergo criminal history background checks. Regardless of its authority to regulate the CDL training schools, the Board did require the CDL training school owners, instructors, directors, and agents to submit to the checks.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 2 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:050. Application for license for commercial driver license training school. In response to a question by Senator Tapp, Ms. Black stated that the fees included in this administrative regulation were established by statute. Subcommitte staff stated that the application fees were established by statute, KRS 165A.475.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 2, 4, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:060. Application for renewal of license for commercial driver license training school. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1 to 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:070. Commercial driver license training school instructor and agent application and renewal procedures. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Section 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:090. Complaint procedure against agents, commercial driver license training schools, uncredentialed agents, and uncredentialed commercial driver license training schools. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:100 & E. Standards for Kentucky resident commercial driver license training school facilities. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY FUNCTION AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to add Section 5 to incorporate by reference the required material. Without objection, and with agreement of the agency, the amendments were approved.

Department of Agriculture: Marketing and Product Promotion

302 KAR 39.010 & E. Agriculture. Mark Farlow, General Counsel, represented the Department.

In response to questions by Co-Chair Thayer, Mr. Farlow stated that this administrative regulation enabled temporary agritourism sites to do business more easily. It also enabled the Department's Agritourism Office to better locate the sites and assist in marketing them.

In response to questions by Senator Roeding, Mr. Farlow stated that this administrative regulation did not apply to farmers' markets. To qualify as a temporary agritourism site, the activity had to be held on an active working farm.

In response to Representative Reinhardt, Mr. Farlow stated that this administrative regulation enabled the Department to better locate temporary agritourism sites and owners and to better assist them in advertising their sites. No fees were required for the sites to receive these services.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: Hazardous Pollutants


In response to questions by Co-Chair Thayer, Mr. Lyons stated that these administrative regulations, 401 KAR 57:002, 60:005, and 63:002, did not apply to vehicle emission testing. They established emission standards for hazardous pollutants by stationary sources, such as industrial facilities. They did not establish any unfunded mandates or fees for the industry.

In response to a question by Senator Roeding, Mr. Lyons stated that these administrative regulations adopted the federal emission standards for the stationary sources. The standards were identical to those at the federal level and did not impose more stringent requirements.

In response to questions by Representative Reinhardt, Mr. Lyons stated that the incorporated standards affected about fifty (50) facilities and that they were stricter than the existing standards.
comply with the new standards, the facilities would need to implement controlled technology to reduce their hazardous air pollutants. The facilities would incur costs in implementing those controls. The costs would differ for each facility depending on the controls required for that type of facility. However, the Department had to update their state implementation plan with the stricter standards if the state was to remain in compliance with federal requirements. To inform the affected facilities about the new standards, the Department had utilized a public outreach program. They had sent out a letter to their contacts at each affected facility. Additionally, the standards were published and commented upon at the federal level prior to any action on them by the Department. The Department would provide the Subcommittees with a list of the facilities affected by the new standards.

In response to questions by Representative Bruce, Mr. Lyons stated that the Department held a public hearing on these administrative regulations on June 26, 2003 and received no comments regarding them.

In response to questions by Senator Roeding, Mr. Lyons stated that the Department would need to update its outreach program to reflect the new notice, hearing, and thirty (30) day comment period requirements for new standard regulations, as established by Senate Bill 71 from the 2003 General Assembly.

In response to additional questions by Co-Chair Thayer, Mr. Lyons clarified his prior response regarding the financial impact of these administrative regulations. He stated that while these administrative regulations did not establish new fees, the industry would incur additional costs to implement the controls that were necessary to comply with the stricter emission standards. Co-Chair Thayer stated that he urged the Department to follow up with the Subcommittee regarding these administrative regulations by providing them with the list of affected facilities. Additionally, he recommended that in the future, the Department be more forthcoming in responding to the Subcommittee’s questions about the financial impact of proposed administrative regulations.

Mr. Koebel, because the new standards were required by the federal government, the affected facilities would incur the costs of complying with them regardless of whether the standards were adopted at the state level. If the state did not adopt the requirements, they would be enforced by federal inspectors instead of the state.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to specify citations; (2) to amend Section 1 to alphabetize definitions; and (3) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

New Source Performance Standards

401 KAR 60:903. 40 C.F.R. Part 60 standards of performance for new stationary sources. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to specify citations; (2) to amend Section 1 to alphabetize definitions; and (3) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Standards of Performance

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to specify citations; (2) to amend Section 1 to alphabetize definitions; and (3) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Public Protection and Regulation Cabinet: Department of Insurance—Health Insurance Contracts

401 KAR 7:437. Requirements for autism benefits for children. Glenn Jennings, Deputy Commissioner, represented the Department.

In response to questions by Co-Chair Thayer, Mr. Jennings stated that the amendments to this administrative regulation merely added definitions supported by insurers and consumer groups. They did not modify the current level or cost of care for an autistic child.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Cabinet for Health Services: Certificate of Need


In response to a question by Co-Chair Thayer, Mr. Gray stated that the administrative regulation made it easier for hospitals and other health care providers because it increased the capital expenditure minimum amount that triggered the Certificate of Need requirements.

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 change references from July 1, 2003, to the effective date of this amendment; to amend Sections 1 and 2 to comply with KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Public Health: Health Services and Facilities

902 KAR 20:014 & E. Effect of previous denial or revocation on applications for a license to operate a health facility or service. Alex Reese, Office of Inspector General, represented the Department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 2, 3, 4, 5, and 10 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 10 to clarify what was meant by “good cause”. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Medicaid Services

907 KAR 1:011 & E. Technical eligibility requirements. Jesse Williams, Branch Manager; Debra Davis, Medicaid Pharmacy Manager, and Frank Persinger, Financial Manager Director, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct a statutory citation; (2) to amend Sections 2, 3, 4, 5, and 10 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 10 to clarify what was meant by “good cause”. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:018 & E. Reimbursement for drugs. A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:085 & E. Breast and cervical cancer eligibility for Medicaid. This regulation had no amendments and was approved.

Commission for Children with Special Health Care Needs: Kentucky Early Intervention System

911 KAR 2:120 & E. Kentucky Early Intervention Program evaluation and eligibility. Trish Howard, Executive Staff Advisor, and Eric Friedlander, Director, represented the Commission.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) to amend Section 1 to specify requirements for IFSP (individual family service plan) meetings scheduled on or after January 1, 2003; (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (5) to amend Section 3 to add the edition date for the periodicity schedule; and (6) to delete Section 4 because it conflicted with the effective dates for administrative regulations established in KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

911 KAR 2:130 & E. Kentucky Early Intensive Care Program for assessment and service planning. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend
TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) to amend Section 2 to specify requirements for IFSP (individual family service plan) meetings scheduled on or after January 1, 2004; (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (5) to amend Section 3 to incorporate by reference the IFSP form required after January 1, 2004; and (6) to delete Section 4 because it conflicted with the effective dates for administrative regulations established in KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

911 KAR 2:200 E. Coverage and payment for Kentucky Early Intervention Program services. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) to amend Sections 1 to 6 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 5 to clarify payment provisions, including requirements regarding billing third party insurance prior to First Steps and for families potentially eligible for Medicaid; and (5) to delete Section 7 because it conflicted with the effective dates for administrative regulations established in KRS Chapter 13A.

Cabinet for Families and Children: Department for Community Based Services: Food Stamp Program
921 KAR 3:035. Certification process. Karen Doyle, Assistant Director, and Roseanne Barkley, Branch Manager, represented the Department.

In response to a question by Senator Roeding, Ms. Barkley stated that by changing the certification period, this administrative regulation potentially affected all 500,000 food stamp recipients. It would change the length of time they received their food stamp benefits.

A motion was made and seconded to approve the following amendments: to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

Education Professional Standards Board: General Administration
16 KAR 1:040E. Teachers' National Certification Incentive Trust Fund.

Kentucky Employees’ Retirement Systems: General Rules
105 KAR 1:360E. Minimum distribution.

General Government Cabinet: Boards and Commissions: Board of Occupational Therapy
201 KAR 28:010. Definitions and abbreviations.
201 KAR 28:051. Repeal of 201 KAR 28:051.
201 KAR 28:070. Examination.
201 KAR 28:140. Unprofessional conduct and code of ethics.

Tourism and Development Cabinet: Department of Fish and Wildlife Resources: Game
301 KAR 2:083E. Transportation and holding of captive cervids.

Justice Cabinet: Department of Criminal Justice Training: Kentucky Law Enforcement Council: Kentucky Law Enforcement Council
503 KAR 1:160E. Department of Criminal Justice Training - Kentucky Police Corps basic training: graduation requirements; records.

Education, Arts and Humanities Cabinet: Board of Education:
Department of Education: Office of Learning Programs Development: Office of Learning Support Services
704 KAR 7:050. Student discipline guidelines.

Public Protection and Regulation Cabinet: Kentucky Racing Commission: Thoroughbred Racing
810 KAR 1:027E. Entries, subscriptions, and declarations.

Cabinet for Health Services: Department for Public Health:
Food and Cosmetics
902 KAR 48:065E. Tattooing.
Office of Inspector General: Inspector General
906 KAR 1:140. Validation and complaint investigation procedures for deemed hospitals.
Department for Medicaid Services: Medicaid Services
907 KAR 1:013E. Payments for hospital inpatient services.
907 KAR 1:160E. Home and community based waiver services.
907 KAR 1:604E. Recipient cost-sharing.
907 KAR 1:655E. Spousal impoverishment and nursing facility requirements for Medicaid.

The Subcommittee adjourned at 12:05 p.m. until September 9, 2003, at 10:30 a.m., in Room 149 of the Capitol Annex.
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of July 16, 2003

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of July 16, 2003, having been referred to the Committee on June 17, 2003, pursuant to KRS 13A.290(6):

909 KAR 6:050 & E
907 KAR 1:479 & E
907 KAR 1:880
908 KAR 3:050
908 KAR 4:030
921 KAR 1:400
921 KAR 2:015 & E
922 KAR 1:130
922 KAR 3:031
922 KAR 6:010
922 KAR 6:061

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 16, 2003 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 30 of the Administrative Register from July, 2003 through June, 2004. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 29 are those administrative regulations that were originally published in VOLUME 29 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2003 bound Volumes were published.

KRS Index

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 30 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 30 of the Administrative Register, and is mainly broken down by agency.
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(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal)

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